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Legal Performance Education in Early Modern England

Introduction: Rehearsing the Revels in St. Dunstan's Tavern (1628–29)

In his “Annals,” Bulstrode Whitelocke describes the scene in St. Dunstan’s Tavern, where he and about twenty other “young gentlemen of good birth, quality, & fortune” spent their time in the winter of 1628–29.¹ They were all members of the Middle Temple, one of the four Inns of Court where young men trained to become lawyers while enjoying the pleasures of London. They met in the tavern, “in the great new built roome there, called the Oracle of Apollo,” to “consult about carrying on, of their great affayre,” the revels: the entertainments—including music and dancing, witty orations, performance of plays and masques, and more—that took place over the three-month long Christmas “vacation” in the Inns. Bulstrode had been chosen as the Middle Temple’s Master of the Revels, making him responsible for both planning and practice sessions in the tavern. Gathering there, the young men engaged in high-spirited revelry that sometimes bordered on riot. For (writes Bulstrode) “among so many young gallants, of warme spirits, . . . differences & contests would sometimes arise.” He would sometimes find them, “in the midst of their quarrells, . . . with swords drawne one against another.” But they also “exercise[d] both their wits & bodyes” through performance training of various kinds: “practis[ing] their dauncing”; rehearsing the theatrical entertainments they would perform at the revels; and “improv[ing] their judgements & knowledge [by] putting of cases.” Like the moots, case-putting was one of the many mock trial “learning exercises” in which students regularly engaged in the Inns as training for courtroom argument. Bulstrode stresses the difference between such serious courtroom practice and revelry: engaged in case-putting, the students “did appear together, much more like to grave antients in a Councell chamber”—that is, like senior lawyers—“then to young revellers in an house of drinking.” But he also stresses the relationship between lawyers and revellers. Case-putting, he suggests, is in fact a form of revelry, and “appear[ing]” like a “grave antien[t]” (performing the role of lawyer) a form of theatre.

¹ BL Additional MS 53726 fol. 45 (col. 1–f) and fol. 46 (col. 2), excerpted in Nelson and Elliott, Jr., ed., *Inns of Court*: 1:223–4.

This chapter explores one facet of legal education in early modern England: the training in courtroom performance and general carriage that taught the aspiring lawyer not just the tools of persuasion but the all-important art of *acting* like a lawyer. In what follows, I explore the various kinds of performance education that law students received: from tutors and books; courtroom observation; dancing, singing, and fencing lessons; theatrical activities; and, most important of all, the moots and other performance exercises that gave future lawyers practice in courtroom argument and demeanor. While my other chapters range across Western Europe, here I focus only on England, with occasional comparisons to Continental legal education. Given the distinctiveness of the Inns of Court and Chancery (the lesser Inns where students usually began their training), early modern commentators often felt they had to explain and defend English legal education at length. Thus, while the archive of sources on early modern Continental legal education is limited, there is an abundant archive of sources on English legal education, much of it describing the hothouse atmosphere of the Inns in intimate detail and offering extended comparison to life in the universities.²

It was in the Inns that most English lawyers received their training: only the Inns taught common law, and common law overwhelmingly dominated English legal practice. For this reason, scholars who have studied early modern English legal education have generally focused solely on the Inns. However, to ignore the role of the universities in educating future lawyers is to lose a substantial part of the story of English legal education. Henry VIII shut down the canon law faculties in 1535, but the Oxford and Cambridge civil law faculties continued to train students for ecclesiastical and civil law positions. Even more important, the undergraduate arts faculties offered significant pre-legal education. As in the medieval universities—students doing the arts course also learned the rudiments of law: important training, since, according to Victor Morgan, the majority of university undergraduates would go on to work in courts in some capacity.³

² In this chapter, I am particularly indebted to the following sources on the Inns: Baker, *Oxford History of the Laws of England*, Vol. 6, 445–72 and *Legal Education in London*; Baker and Thorne, ed. *Readings and Moots at the Inns of Court*; and Prest, *Inns of Court under Elizabeth I and the Early Stuarts*. On civil-ecclesiastical law training in England, see Helmholz, *Profession of Ecclesiastical Lawyers*, 39–58 (on education) and *Oxford History of the Laws of England*, Vol. 1, 237–309 (on the early modern period); and on the ecclesiastical courts generally during the period, Outhwaite, *Rise and Fall of English Ecclesiastical Courts*. On legal education in the early modern English universities, see Levack, “Law” (in Tyacke, ed., *History of the University of Oxford*, Vol. 4); Wijffels, “Disputations en droit à l’Université de Cambridge”; and Baker, “750 Years of Law at Cambridge.” On the early modern English universities generally, see Morgan and Brooke, *History of the University of Cambridge*, Vol. 2; Brockliss, *University of Oxford*; Thompson, *Universities in Tudor England*; and Costello, *Scholastic Curriculum at Early Seventeenth-Century Cambridge*. On early modern Continental legal education, see Ridder-Symoens, ed., *History of the University in Europe*, Vol. 2 (599–609 for Brockliss’s description of the law faculty curriculum); and Grendler, *Universities of the Italian Renaissance* (430–73 on the law faculties).

³ On the study of forensic oratory in the Cambridge Arts faculty, see Jardine, “Humanism and the Sixteenth Century Cambridge Arts Course,” 20; and Morgan and Brooke, *History of the University of Cambridge*, vol. 2, 133–4 (the vast majority of Cambridge undergraduates would ultimately use their university training in “the law courts, [and] the judicio-administrative-political meetings of quarter

While the Inns take center stage in this chapter, they cannot be treated in isolation. For there was a constant flow of people and ideas between the Inns and universities, traveling in both directions.⁴ In the 1590s, James Whitelocke (Bulstrode's father) somehow managed to be a student at both St. John's College and the Middle Temple simultaneously, running back and forth between Oxford and London and "Keeping thus by turnes in bothe places": at first secretly; eventually, with the leave of his college president, who found it handy to have a runner for errands in the city.⁵ Polemicists may have emphasized the rivalry between the common law taught in the Inns and the civil law taught in the universities. But many enthusiastically championed learning both bodies of law (stressing their similarities rather than their differences).⁶ Even in practice they were far from hermetically sealed off from each other, for civil lawyers often served in common law courts and vice versa.⁷ Those who compared the Inns to the universities tended to stress not their differences but what they shared. The Inns were the "third university of England," as Sir George Buc famously put it, and "as worthily stiled an university" as all the others (Oxford, Cambridge, Angiers, Perugia, Salamanca, and more), having not only "the stile" but also the "title [of] a chiefe and principall universitie."⁸

sessions and assizes" [133]). The typical trajectory was to spend a few years in the university (without taking a degree) and then move on to an Inn. From 1590 to 1640, well over half of practicing common lawyers had attended a university as well as an Inn (Prest, *Rise of the Barristers*, 111–12). Students seeking civil law degrees usually began with an undergraduate arts degree and then went on to the law faculty, but in English universities (unlike in most Continental universities), one could in fact get a Bachelor of Law without an arts degree.

⁴ To offer just a few examples, Abraham Fraunce studied philosophy for eight years at St. John's College Cambridge before entering Gray's Inn, where he completed the *Lawiers Logike* he had begun at Cambridge (addressed to both "the Gentlemen of Grays Inne" and those "fine University men" who would eventually "apply their heads to the study of the Law" [1588 ed., sig. ¶2r]). Thomas Sackville studied at Cambridge and Oxford, went on to the Inner Temple, and then later became Chancellor of Oxford. Alberico Gentili, Regius Professor of Civil Law at Oxford, was admitted to Gray's Inn in 1600 and began practicing law in London, but also served in the (civil law) Admiralty Court as standing advocate for Spain from 1605 to 1608 (Gentili, *Wars of the Romans*, xxvii).

⁵ Whitelocke, *Liber famelicus*, 14–15.

⁶ For a few examples, see Elyot, *Boke Named the Governour*, fol. 54v–55r (praising civil law); Whitelocke, *Liber famelicus*, 14 (he "began to joyne the study of the common law withe the civill" because he "saw how great use" ecclesiastical lawyer Richard Cosin "made of his knowledge [*sic*] of the common law"); Fulbeck[e], *Parallele or Conference of the Civill Law*; Fulbecke, *Direction or Preparative to the Study of the Lawe*, fol. 72v–81v ("Table of certain words in the Interpretation whereof the Common Law of this Realme and the Civill Law doe seeme to agree"); Waterhouse, *Fortescutus Illustratus*, 223–4, 236, 249–51 (arguing for the importance of civil law). Several civil law professors championed studying common law in universities alongside civil law, most notably John Cowell.

⁷ See Helmholz, "Civilians in the Common Law Courts"; and Siepp, "Reception of Canon and Civil Law in the Common Law Courts." On civil lawyers in England generally, see Levack, *Civil Lawyers in England*; and Squibb, *Doctors' Commons*.

⁸ Buc, "Third Universitie of England" in Stow, *Annales* (1615 ed.), sig. Mmmm3r–v (965–6, but volume erratically paginated). See also his comparison of degrees and ranks in the Inns with university degrees (sig. Nnnn3r [969]). Such comparisons differed. Sir Henry Spelman compared barristers to bachelors, apprentices to masters, and serjeants to doctors (Baker, *Collected Papers*, 1:34). For Coke, "Mootemen," "Utterbarristers," "Readers," "Benchers, or Auncients," and "Serjeants" were equivalent

Both common and civil law students later pursued a variety of careers—political, diplomatic, academic—and sometimes no career at all, planning to live not “by the practise [of law], but onely uppon their fathers allowance” (as Sir John Fortescue put it).⁹ Some remained in the lower echelons of the profession, working as solicitors (“petty foggors of the lawe” as William Harrison famously called them), or low-level clerks.¹⁰ But many who trained as lawyers in the Inns set about to become barristers and hoped to become serjeants-at-law (the highest-ranked barristers), arguing cases in court before judges and ideally eventually becoming judges themselves.¹¹ This education could be grueling. In the preface to Abraham Fraunce’s *Lawiers Logike* (1588), a fictional common lawyer proudly describes the study of common law as “hard, harsh, unpleasant, unsavory, rude and barbarous.”¹² For those serious about becoming lawyers, studying in the Inns probably did entail much that was “hard, harsh, [and] unsavory”: memorization of writ forms, pleadings, rules, maxims and more (mostly in law French), as well as digging through the “vaste volumes” in which the common law was “confusedly scattered and utterly undigested” (in Fraunce’s description).¹³ While civil law was supposed to be more “constant and philosophicall,” “more methodically, and . . . eloquently put downe,” more “elegant and delectable” than common law (according to Fraunce), studying it required one to grind through what Sir Thomas Elyot described as “the great fardelles and trusses of the most barbarouse autours stuffed with innumerable gloses: wherby the most necessary doctrines of lawe . . . be mynced into fragments.”¹⁴

At the same time, students in both the universities and the Inns engaged in other more pleasurable learning activities. Most prominent among these were moots and disputations (words that Buc uses interchangeably—“disputations

to Oxford’s “Sophisters, Bachellors, Masters, [and] Doctors” (*Tierce part des reportes* [1610 ed.], sig. D4r–D4v). And see Waterhouse, *Fortescutus Illustratus* (the degree of serjeant is equivalent to a “Doctorship of the Law” [547]).

⁹ Fortescue, *De laudibus legum Angliae* (1616 ed.), fol. 115r. This may in fact have described the majority of students. Certainly, absentee rates during the required “learning vacations” were high (Prest, *Inns of Court*, 15–16).

¹⁰ Harrison’s “Historicall description of Brytaine” (Bk 3, Ch 3) in Holinshed, *Firste [Laste] Volume of the Chronicles* (1577 ed.), fol. 100r.

¹¹ For a discussion of the shifting status of different members of the legal profession, see Brooks, *Pettyfoggors and Vipers*; Prest, *Rise of the Barristers*; and Baker, *Oxford History of the Laws of England*, Vol. 6, 437–43 and *Common Law Tradition*, 78–87. The serjeants originally had a monopoly on pleading before the central courts, but with the demand for lawyers in the sixteenth century, the rules were relaxed, and “utter-barristers” (initially, a designation applicable only to one’s status in an Inn) were allowed to plead in the central courts. See Baker, *Common Law Tradition*, 82–4 (in 1547, qualification for practicing at the bar of the central courts was redefined by the judges to be five years’ standing as an utter barrister [84]). Although the term “barrister” was not used in the earlier period to denote lawyers who argued in court, I use it as the general term.

¹² Fraunce, *Lawiers Logike*, sig. ¶2v (a “Tenurist,” that is, one who knows Thomas Littleton’s *Tenures*).

¹³ Fraunce, *Lawiers Logike*, sig. ¶3v. For a study of the extensive reading list of Thomas Egerton when he was at Lincoln’s Inn, see Knafla, “Law Studies of an Elizabethan Student.”

¹⁴ Fraunce, *Lawiers Logike*, sig. ¶¶1r–v; Elyot, *Boke Named the Governour*, fol. 53r.

which they call mootes,” “Mootes or disputations”—stressing the parallel between Inns and universities).¹⁵ These exercises not only taught legal substance but offered essential practice in courtroom performance. Under various names, they took place in one form or another in both the Inns and universities nearly daily: in the Inns, as “bolts,” “case-putting,” “chapel,” “house,” “term,” “hall” and “library” moots (and more); in the universities, in ordinary and extraordinary, “*quadragesimals*” (during Lent), Act and Commencement disputations (inception or “*vesperia comitorum*”), and more.¹⁶ Such exercises could range from informal practice sessions with a tutor to highly ceremonial public “performances” (as contemporaries often referred to them) with large audiences.¹⁷ All were central to the learning process, but the more formal ones were the ultimate tests of knowledge and skill. These served effectively as examinations and graduation exercises, necessary to advancement in both the Inns and universities. As Sir John Baker writes: “the bachelor, the doctor and the serjeant all created themselves, by performing the exercise or pleading which carried them up the step”; the “process of graduation was inseparable from the performance of moots.”¹⁸ I focus primarily on what these exercises meant for students in the most formative period of their education. But everyone performed in them: in the universities, all from beginning students to doctors; in the Inns, “inner-barristers” (the most junior members), “utter-barristers” (those who could argue at “the bar”), “readers” (who gave lectures, generally in order to qualify as benchers); and “benchers” (the senior barristers who governed the Inns).¹⁹ The use of the word “apprentices of the law” for some of the highest-ranking barristers suggests that all were in a sense apprentices.²⁰

¹⁵ Buc, “Third Universitie of England,” sig. Nnnn3r, Nnnn4r (paginated as 969, 971). Fortescue similarly draws the parallel (*De laudibus legum Angliæ* [1616 ed.], fol. 56r). On the parallel structure of university law faculty disputations and moots, and of their graduation exercises, see Baker and Thorne, ed., *Readings and Moots*, 2:xxvii–xxv, lvi–lvii. For the parallel between the readings and lectures, and between the moots and disputations, see Freda, “Legal Education in England and Continental Europe,” 256–60. For clarity, I reserve the word “disputations” for those exercises that took place in the universities, using “moots” as shorthand for the various kinds of case-putting exercises in the Inns (following Baker and Thorne, ed., *Readings and Moots*, 2:xvi).

¹⁶ On the variety of forms the mock trial exercises in the Inns took, see Baker and Thorne, ed., *Readings and Moots*, 2:lxix–lxxxv. For their frequency, see the 1613 schedule in Dugdale, *Origines Juridicales*, 268–70. On the various sorts of disputations in the universities, see Morgan and Brooke, *History of the University of Cambridge*, vol. 2, 186; and Costello, *Scholastic Curriculum at Early Seventeenth-Century Cambridge*, 15–16.

¹⁷ For an early example of the word “perfor[m]” to designate a learning exercise, see e.g. the record from Furnival’s Inn in 1422 (“Here began an Exercise of Learning not before mencyoned and was to be performed. . . .” [quoted in Bland, *Early Records of Furnival’s Inn*, 26]). For later examples, see e.g. D’Ewes, *Diary* (ed. Bourcier), 61, 92, 108, 129 (etc.); and the many instances I quote throughout this chapter.

¹⁸ Baker and Thorne, ed., *Readings and Moots*, 2:lvii.

¹⁹ As Baker stresses, “the bar” and “bench” were physical objects in the Inns that came to stand for certain achievements. Thus, one could be an “utter-barrister” without being qualified to argue at the bar in an actual court (Baker, *Oxford History of the Laws of England*, Vol. 6, 458).

²⁰ On the designation “apprentice,” see Baker, *Readings and Moots*, 11; Baker and Thorne, ed., *Readings and Moots*, 2:lvii and note 281; and Baker, *Collected Papers*, 1:33–6 (apprentices were “fully fledged advocates below the degree of serjeant” [1:33], usually readers or benchers). The distinguished

Although we know a tremendous amount about the moots (thanks to the work of legal historians), their portrayal in the records that have survived is fairly schematic, with little detail on how they unfolded as events and lived experiences: the specifics of their staging; the participants' demeanor, gestures, and affect; the nature of the audience members and their reactions. Those who recorded moot cases or arguments preserved these primarily as teaching texts, leaving out all the details they thought inessential to learning law. The rules outlining their procedures give formulae for exercises but generally prescribe rather than describing. The descriptions we do have are either fragmentary or written by apologists for the Inns like Buc, who render the moots in idealized terms. Such sources—if taken at face value—clearly do not tell the whole story. To envision the moots fully, we have to read between the lines. As I will suggest, the much richer accounts we have of university disputations and of revels (in both the Inns and the universities) help us to do so: not because the norms for university disputations were the same as those for moots (let alone those for the revels) but because these performances help make certain obscure aspects of the moots visible. Together, all of these performances not only served as forms of courtroom rehearsal: they also helped to shape the identity of the lawyer and forge a set of sometimes contradictory visions of what it meant to be a member of the profession.

Directions for the Study of Law: Learning to Act Like a Lawyer

Rhetorical Education as (Legal) Performance Training

In his *Boke Named the Governour* (1537), Sir Thomas Elyot proposed an educational program for—among others—young men destined for the bar and bench. In a chapter on “Howe the studentes in the lawes of this realme, maye [learn from] the lessons of sō[n]dry doctrines,” he argues that future lawyers should study, above all, the ancient orators.²¹ Some might worry that “the swetnesse” of such study would “utterly withdrawe the myndes of yonge men from the more necessary studye of the lawes” (fol. 52v). But in fact, the ancient orators teach precisely the skills needed not only for courtroom pleading but for practicing such pleading in moots:

lawyer Edmund Plowden referred to himself when he was in his 50's as “un apprentice de le comen ley” (*Les comentaries ou les reportes de Edmunde Plowden* [1571], title page). And see Waterhouse's comment: “the travel and pains in the abstruse study of the Common-Law, is such, that when [common lawyers] have studied as long as their bodies will endure, or their eyes assist them; yet after all, do not arrive to be Doctors, Professours, Exprofessours; but in the most accumulate advances are but Apprentisii & servientes ad legem” (*Fortescutus Illustratus*, 139).

²¹ Elyot, *Boke Named the Governour*, fol. 50v–56r (fol. 53r on studying ancient orators), hereafter cited in the text.

[I]n the lernyng of the lawes of this realme, there is at this day an exercise, wherin is a maner of a shadowe or figure of the auncient rhetorike. I meane the pleading used in courte & Chancery called motes. (fol. 53r–v)²²

The moots are merely a “shadowe or figure” of ancient oratory because, frankly, the students are no Ciceros. But they do employ the classical canons of rhetoric: *inventio* when they invent arguments; *dispositio* when they arrange the pleas; and *memoria* when they memorize their parts.²³ Replacing the “barberouse” law French in which participants argued with pure French or Latin would easily remedy the absence of *elocutio*. As for *pronuntiatio* (delivery), despite the fact that English lawyers *never* attempt to “ste[er] [the] affectiō[n]s of the minde” (perhaps Elyot is joking?), some lawyers do “pronounce right vehemē[n]tly” (at least when “wel reteyned”). In any case, “in arguynge theyr cases,” the students even now lacke very lytell of the hole art” (fol. 53v–54r). If they were educated to be “depely lerned in the arte of an oratour [as well as] the lawes of this realme,” then “fewe men in consultations, shuld (in myne opinion) compare with our lawyars” who would, by this means, be “brought to be perfect oratours.” Such perfect orators would have all of the qualities that Cicero required: “the sharpe wyttes of logitians, the grave sentences of philosophers, the elegancie of poetes, the memory of civi[l] [lawyers],” and, not least, “the voice and gesture of them that can pronounce comedies” (fol. 54r–v).²⁴

In his *Direction or Preparative to the Study of the Lawe* (1600), William Fulbecke makes a similar claim about the education of future lawyers, though in somewhat less elevated terms: a young boy’s

parents and tutors in the University should have principall regard, that he who is to addresse himselfe to the study of the lawe, may be fitt with a plausible grace to discourse and dispute. (fol. 39r)²⁵

In theory, most young gentlemen were in training to discourse and dispute gracefully from an early age. John Stanbridge’s 1509 Latin textbook, for instance, includes classic prescriptions: however pleasant the child’s speech, “[i]t is a rude maner [to] stande stylly lyke an asse” or “to be wanderynge of eyes, pykyng or

²² As Baker and Thorne note, one of the normal fourteenth-century meanings of “to moot” was to plead a case in court (*Readings and Moots*, 2:xlx). Elyot makes it clear he is referring to a learning exercise: his reference to court and chancery is merely an analogy (this exercise is like the moots actually used in court). On the earlier history of the word “moot,” see Chapter 4, note 58.

²³ See the discussion in Eden, “Forensic Rhetoric and Humanist Education,” 24.

²⁴ See Cicero, *On the Orator* [Loeb], 1:89–91 [1.28] (“in an orator we must demand the subtlety of the logician, the thoughts of the philosopher, a diction almost poetic, a lawyer’s memory, a tragedian’s voice, and the bearing almost of the consummate actor”).

²⁵ Fulbecke, *Direction or Preparative to the Study of the Lawe*, fol. 39r (all parenthetical citations to Fulbecke, sometimes listed as “Fulbeck,” are to this text unless otherwise noted).

playenge y^e foole with his hande and unstable of foote”; rather, “gesture [must] be comely with semely & sobre movynge: somtyme of the heed somtyme of the hande & fote: and as the cause requyreth with all the body.”²⁶ Pedagogic manuals like John Brinsley’s *Ludus Literarius, or the Grammar Schoole* (1612) stress the importance of teaching not only verbal skills but delivery, which goes by a variety of names that denote both vocal and bodily style: “pronunciation,” “utteraunce,” “deliveraunce,” or sometimes “elocution” (incorporating classical *elocutio*, *actio*, and *pronuntiatio*).²⁷ Students, explains Brinsley, are to “pronounce [their] Theam without book,” while the master examines their performance as they speak, evaluating “audacitie, memory, gesture, pronuntiation.”²⁸

These were not merely theoretical desiderata: English grammar schools in fact put such principles into practice in days packed with oral performances, frequent assessments of delivery, and basic lessons in classical oratory.²⁹ A school commonplace book from the 1590s records one such lesson, explaining that “action” (*actio*) is called the “eloquence of the bodye, or a shadowe of affect,” and that the speaker needs “three springes which flowe from one fountayne”: “*vox, vultus, vita*. Voyce, countenance, life.”³⁰ *Prosopopoeia* and *ethopoeia* remained important, not only as composition exercises but also as performance skills, involving, for instance, the use of the voice to make “lamentable imitacion, upon the state of any one” (according to Richard Rainolde’s *Booke Called the Foundacion of Rhetorike* [1563]).³¹ Many masters used theatre to train their students in performance skills. For instance, Winchester headmaster Christopher Johnson explained in the 1560s that “those stage plays which we have lately exhibited to the view” helped teach “what must be pronounced with what expression, with what gestures”: how “there should be in the voice a certain amount of elevation, depression, and modulation, in the body decorous movement without prancing

²⁶ Stanbridge, *Vulgaria of John Stanbridge*, 114 (italics and line breaks removed). See also Enterline’s discussion of Mulcaster’s “loud speaking” (or “vociferation”) exercises (*Shakespeare’s Schoolroom*, 33). Unsurprisingly, the books on elementary education quote the classic stories on delivery. See e.g. Mulcaster, *First Part of the Elementarie*, 19; and the commonplace book cited by Enterline, *Shakespeare’s Schoolroom*, 39.

²⁷ See e.g. Doddridge (following Melanchthon and Cox): “Eloquution doth consist of three things, first, of the voyce as the instrument, 2, the words that are the subject; 3, the manner of doing, which is the forme of delivery” (*English Lawyer*, 25).

²⁸ Brinsley, *Ludus Literarius*, 177–8.

²⁹ See Wesley, “Rhetorical Delivery for Renaissance English,” 1267, on daily schedules for grammar schools such as Merchant Taylors’, Westminster, Norwich, and Harrow and on inter-school performance events. My discussion of grammar school performance education is greatly indebted to Wesley’s essay and to the account in Enterline, *Shakespeare’s Schoolroom* (especially 9–61); and see Joseph, *Elizabethan Acting* (especially 9–17).

³⁰ Quoted in Enterline, *Shakespeare’s Schoolroom*, 40.

³¹ Rainolde, *Booke* (1563 ed.), fol. 49r. See Wesley, “Rhetorical Delivery for Renaissance English,” 1275; Enterline, *Shakespeare’s Schoolroom*, 31, 79–88, 92–4, 127–42; and the discussion of medieval schoolboys’ training in *prosopoeia* and emotional identification in Woods, *Weeping for Dido*.

around, sometimes more quiet, at others more vehement.”³² Looking back on the origins of his career as lawyer and judge, James Whitelocke was to stress the success of such training: “yearly [headmaster Richard Mulcaster] presented sum playes to the court, in whiche his scholers [were] actors, and I on[e] among them, and by that meanes taughte them good behaviour and audacity.”³³

The universities offered students a more advanced form of such performance training. From at least the mid-sixteenth century, the undergraduate program involved intensive rhetorical study that entailed reading, among other things, the great texts on oratory, as well as some foundational legal texts.³⁴ Cambridge Master Richard Holdsworth, for instance, assigned the students he tutored “Justinians Institutions w:^{ch} are the grounds of Civil Law,” along with Cicero’s and Demosthenes’ orations, Cicero’s *On the Orator*, Quintilian’s *Orator’s Education*, Seneca’s *Controversies*, and various texts on “Modern Oratorie.”³⁵ All these could teach the student “the nature of mens passions & affections, how to raise & move them, & how to allay quiet & change [them]” so “that Auditors may hear with delight & you goe through it with ease” (2:643). “[N]o piece of scholarship is more usefull, & necessarie” (2:644), he insists. Without it,

[l]earning though never so eminent, is in a manner voide & useless, without [it] you will be bafeld in your disputes, disgraced, & vilified in Publicke examinations, laught at in speeches, & Declamations. You will never dare to appear in any [disputation] of credit in y^e University. (2:637)

Putting principles into practice was crucial. “At the begining of [the third] quarter, [you] are to begine to dispute [in] your Tutors Chambers, & so continue that exercise through all your studies, & in every faculty,” explains Holdsworth (2:636). Doing so involved developing not only verbal skills but also performance skills. Another Cambridge tutor, James Duport offers lessons in piety, study habits, and conduct (do not “pic[k] your Nose” in “your Tutors Chamber”), but intersperses these lessons with performance advice: “be sure you speake audibly, & tractably, aloude, & leisurely”; “[s]lubber not over your exercises in a slight and carelesse perfunctory manner, as if you performed them *per formam* only.” And “[w]hen you dispute, . . . take heede of that dull, cold, idle, way of reading Sylogismes out of

³² Recorded in a student notebook; quoted in Enterline, *Shakespeare’s Schoolroom*, 43 (and, for further examples, Enterline 41–3; and Wesley, “Rhetorical Delivery for Renaissance English,” 1268, 1280).

³³ Whitelocke, *Liber Famelicus*, 12.

³⁴ On the new rhetorical program for first-year students instituted in 1559, see Costello, *Scholastic Curriculum*, 41, 43–4. On rhetoric and dialectic in the universities generally, see Mack, *Elizabethan Rhetoric*, 48–75.

³⁵ Holdsworth, “Directions for a Student in the Universitie,” in Fletcher, *Intellectual Development of John Milton*, 2:634–46; hereafter cited in the text. (Most scholars accept the attribution of the “Directions” to Holdsworth, who became a Fellow of St. John’s College in 1613.) See also the extensive list of legal texts in the anonymous mid-seventeenth-century “younger schollers” reading list (DeJordy and Fletcher, ed. *Library for Younger Schollers*, 46, 52–4, 58–61).

a paper.” It was “not enough barely to pronouce, & propound your Arguments,” you had to express them with “life and courage.”³⁶ Like grammar school students, university students could learn such “life and courage” from performing in plays. Writing c.1600 to his son John who was at Queens’ College Cambridge, Thomas Isham draws on classical precedent to recommend learning from actors (sounding much like Elyot):

the best orrators in tymes past as Cicero amongst the Romans, and Demostines amongst the Grecians...learned of stage players to pronounce playnelie to speake ellequentlie, to act there speches properlie.... lett not then that be contemptable unto yow which wise menn hereto fore highlie have esteemed.³⁷

University statutes could in fact mandate the performance of plays for such purposes, as a Queen’s College statute did in 1558–59, requiring the Greek master and examiner to put on plays before Christmas so that the students would not “remain crude in pronunciation and gesture and unpolished.”³⁸ For Doctor of Civil Law William Gager, who directed students in his own Latin plays at Oxford in the 1580s and 90s, university theatre allowed students “to trye their voyces, and confirme their memoryes; to frame their speeche; to conforme them[selves] to convenient action.”³⁹ Thus, most students entering the Inns already had substantial training in delivery, through exercises that served (as Peter Mack writes) “as preparation for mock-trials at the Inns of Court.”⁴⁰

Scholars of early modern English legal education have debated the extent to which rhetorical education penetrated the Inns.⁴¹ Doubts about its importance

³⁶ Duport, “Rules to Be Observed by Young Pupils & Schollers in the University,” in Trevelyan, “Undergraduate Life Under the Protectorate,” 329–30 (hereafter cited in the text). Duport was a tutor at Trinity College, Cambridge, between 1635 and 1664. See Van Miert, “Disputation Hall in the Seventeenth-Century Dutch Republic,” 217 for similar performance advice in Dutch texts.

³⁷ Isham Correspondence 14 (May 9, 1600?), Northamptonshire Archives; quoted in part in Morgan and Brooke, *History of the University of Cambridge*, 137. With thanks to Andrew North of the Northamptonshire Archives and Heritage Service for locating this letter and confirming the identities of Thomas Isham and his son John, who matriculated at Queens’ in 1597.

³⁸ Nelson, ed., *Cambridge* (1989), 2:1130. Similarly, in 1546, Queens’ College had required that all scholars below the level of master of arts attend and occasionally participate in drama. See Clopper, *Drama, Play, and Game*, 61.

³⁹ Letter reproduced in Young, “William Gager’s Defence of the Academic Stage,” 614. See also Northbrooke’s comment: students may perform in “Comedies, and suche lyke things... both in the Universities, and [other] Schooles... for learning and utterance [delivery’s] sake,” so long as the plays “be not mixt with any ribaudrie and filthie termes” or “vaine and wanton toyes of love” (*Spiritus est Vicarius Christi* [1577], 75–6).

⁴⁰ Mack, *Elizabethan Rhetoric*, 66.

⁴¹ Such debates are quite similar to those I note in Chapters 3 and 5 about the extent to which rhetorical theory penetrated legal practice in earlier periods. The sustained skepticism seems surprising, since it is impossible to ignore the impact of rhetorical education on (among other things) law students’ and lawyers’ commonplace books and the classical orations delivered during the revels, which both imitated and parodied the lessons of rhetorical education. For accounts detailing this influence, see e.g. Goodrich, “Ars Bablativa” (especially 56–69); Schoeck, “Borromeo Rings,” “Lawyers and Rhetoric,”

there perhaps arise from the fact that some early moderns themselves denied that rhetoric—and humanist education generally—were of use to common lawyers. Elyot is clearly answering those who argued that “the swetnesse” of rhetorical study *would* “utterly withdrawe the myndes of yonge men from the more necessary studye of the lawes.” Fraunce is clearly answering those who thought that “elegant, conceived, nice, and delicate” university studies *were* incompatible with study of the “hard, harsh, unpleasant, unsavory” but all-important common law (sig. 2r).

And yet, if there were detractors, Elyot and Fraunce were far from alone in viewing rhetorical study as valuable to both law students and practicing English lawyers. When Puttenham praises Nicholas Bacon’s eloquence in the Star Chamber (superior to that of “all the Oratours of Oxford or Cambridge”), he notes that Bacon was often to be found “in his gallery alone with the works of *Quintilian* before him.”⁴² It may be (said the Richard Mulcaster) that “no English man [will] prove a *Tullie* or like to *Demosthenes*” using the same techniques that the ancients “used in their spacious and great courts.” But nevertheless, an Englishman “maie prove verie comparable to them [in] the eloquence” used in his own.⁴³ It is clearly such views that prompted some of the recommendations in “the Bacon report” (as it is often called): a description of and set of recommendations for the Inns drawn up for Henry VIII in 1539–40 by a committee consisting of Nicholas Bacon and several other Inn members.⁴⁴ The Bacon report proposed, among other things, that the Inns implement the equivalent of university rhetorical training. Three days per week, someone with “excellent knowledge in the *Latine* and *Greek* tongue” should “read some Orator, or book of Rhetorick, . . . openly to all the Company,” and some of the moots should be replaced with “dayly Declamations . . . in *Latine*.”⁴⁵ The Inns never implemented these proposals, a fact that some have taken as evidence that the governors decided that rhetorical training was irrelevant to common law education. However, it is possible that the governors failed to implement the proposals because they recognized that students were already getting such training in other forms. The moots themselves appeared as one such form of training. Richard Huloet defined “[to] Declame” in his 1552 dictionary as to “exercise fayned argument in pleadynge, used among

and “Rhetoric and Law.” On common lawyers’ commonplacing books and notebooks, see Mack, *Elizabethan Rhetoric*, 104–8 (on John Manningham’s Middle Temple diary); Williams, “Medieval Book and Early-Modern Law,” 58–9; and Brooks, *Law, Politics and Society*, 66.

⁴² Puttenham, *Arte of English Poesie*, 116–17 (and see Chapter 5, 206). Bacon had risen to the position of Lord Keeper of the Great Seal by the time of Puttenham’s account.

⁴³ Mulcaster, *First Part of the Elementarie*, 257.

⁴⁴ The “Bacon report” consists of two reports by the committee, which included Bacon (Francis’ father), Thomas Denton, and Robert Cary. Waterhouse, *Fortescutus Illustratus*, 539–46, includes complete copies of the originals (now lost).

⁴⁵ Waterhouse, *Fortescutus Illustratus*, 541.

lawyers called moot[ing].⁴⁶ If for Buc and others the moots were university-style disputations, they were also (for Huloet at least) declamations in law French comparable to the “dayly Declamations” in Latin that the Bacon report recommends.

Manuals for the English Law Student

One of the other ways students got rhetorical training was, of course, by “read[ing] some Orator, or book of Rhetorick” in the privacy of their chambers. Thomas Wilson’s extremely popular *Arte of Rhetorique* (1553) was just one of the many concise, English rhetorical manuals available to those who did not want to take the time to read those heavy Greek and Latin treatises that university tutors like Holdsworth assigned.⁴⁷ Gabriel Harvey’s copy of Quintilian famously contained the following note: “Wilson’s Rhetorique & Logique, the dailie bread of owr common pleaders, & discoursers:” clearly at least some lawyers—and, presumably, law students—were getting their rhetorical instruction from such books.⁴⁸ In Chapter 5, I note how many early rhetorical manuals seem to envision lawyers as potential readers. But one might equally say that they envision law *students* as potential readers. Leonard Cox explains that he wrote his *Art or Crafte of Rhetoryke* (c.1530) for “the profyfte of yonge studentes” (rhetoric is necessary to those who wish to become “Advocates and Proctours in the law”).⁴⁹ Wilson explains that he has framed his book as a series of “Lessons,” in order to teach, among other things, “pleadyng at the Barre.”⁵⁰ Fraunce addresses the preface to his *Lawiers Logike* “especially [to] the Gentlemen of Grays Inne,” publishing his *Arcadian Rhetorike* as its companion volume. (Both appeared in 1588, the year he himself was called to the bar.)⁵¹ Middle Templar John Hoskyns addresses his rhetorical handbook, *Direcciōns for Speech and Style* (c.1599), to a “yonge maiste[r] of the Temple.”⁵²

⁴⁶ Huloet, *Abecedarium anglico latinum*, sig. H2v.; quoted in Mack, “Declamation in Renaissance England,” 130.

⁴⁷ Unless otherwise noted, all parenthetical citations to Wilson are to the *Arte of Rhetorique* (1553 ed.), which went through nine editions before 1585. For a discussion of the period’s manuals generally, see Chapter 5, 204–8 (as well as the discussions of the relationship between rhetoric and law that I cite above). For studies specifically of the English manuals, see Mack, *Elizabethan Rhetoric*, 76–102; and Perry, “Legal Handbooks as Rhetoric Books” and “Legal Rhetoric Books in England.”

⁴⁸ Harvey, *Gabriel Harvey’s Marginalia*, 122.

⁴⁹ Cox, *Art or Crafte of Rhetoryke*, sig. A2v (1532 edition, hereafter cited in the text). Cox’s dedication stresses his identity as both a university lecturer and schoolmaster who has “charge of the instruction & bryngynge up of . . . youth” who may eventually become civil law practitioners.

⁵⁰ Wilson, *Arte of Rhetorique*, fol. 58r (here, specifically on the *exordium*). On Wilson’s legal interests and career, see Chapter 5, note 20.

⁵¹ *Lawiers Logike*, sig. ¶1r. Fraunce entered his *Arcadian Rhetorike* into the Stationers Register three weeks after *Lawiers Logike*, having noted there that one must “joy[n] Rhetorike with Logike” (fol. 120r). On the Stationers Register entry, see Seaton’s introduction to Fraunce, *Arcadian* (1950), vii.

⁵² Osborn, *Life, Letters, and Writings*, 117 (reproducing the *Direcciōns*, 114–66).

Alongside such rhetorical manuals, a distinctive kind of manual began to emerge in the seventeenth century. These were similar in some ways to the earlier “mirrors” of law in serving as both guides to practice and lawyers’ conduct literature, but they had titles that specifically targeted the English law student: *Direction or Preparative to the Study of the Lawe* (1600); *A Due Direction for the Study of the Law* (1629); *The English Lawyer . . . Expressing the Best Qualities Requisite in the Student Practizer* (1631); *Treatise [on] the Lawes . . . Very Usefull and Commodious for all Students* (1651); *Perfect Guide for a Studious Young Lawyer* (1654); *Directions for the Study of the Law* (1662).⁵³ These advised the law student on how to study, ethics, style, manners, and courtroom behavior. They specified (among other things) the proper physical regimen for the aspiring lawyer. “A Student must in his diet be temperat, and abstinent,” explains Fulbecke.

A fat and full belly yeeldeth nothing to a man but grosse spirits, by which the sharp edge of the minde is dulled and refracted, and too much meate cast into the stomack doth ingender nothing but cruditie and diseases.

Indeed, one must avoid “all voluptuousnes and lust,” for instance “covetuosnes [*sic*], excesse of diet, wantonnes, and all other unlawfull delights.”⁵⁴ Such bodily care was necessary because legal argument was a bodily practice. “Mans body,” writes John Doddridge in *The English Lawyer*, is an “instrument and organ for the operation of the powers of the soule.” Law students must strive to make their bodies “more apt instrument[s]” for their work.⁵⁵ As Fraunce and Wilson had stressed, bodily care was especially essential to delivery: “[w]alking a litle after supper, annoynting, moderation of diet, and such like bodilie pleasures keepe the voyce in temper” (writes Fraunce) and “helpe muche to have a good deliveraunce” (writes Wilson).⁵⁶

Both law student manuals and rhetoric books could correct unfortunate bodily habits. As Fulbecke explains, “by nature we hold that fast which in our tender yeares we conceive, and the worse sort of things do stedfastly abide in us” (fol. 39r). Wilson offers a long catalogue of such “worse sort of things”: the “thousand . . . faultes” of “bothe . . . speache, and . . . gesture” that his book seeks to correct.

⁵³ Fulbecke, *Direction or Preparative*; Doddridge, *Lawyers Light and English Lawyer*; Noy, *Treatise of the Principal Grounds and Maximes of the Lawes*; Fidell, *Perfect Guide for a Studious Young Lawyer*; Phillips’ *Studii Legalis Ratio*.

⁵⁴ Fulbecke, *Direction or Preparaive*, fol. 12v (hereafter cited in the text). For a discussion of the manuals’ regulatory nature and their stress on bodily care, see Goodrich, *Law in the Courts of Love*, 72–94 (especially 80–3).

⁵⁵ Doddridge, *English Lawyer*, 18 (probably written in the 1620s but published posthumously in 1631; hereafter, in-text citations to Doddridge, occasionally spelled Doderidge or Dodderidge, refer to *The English Lawyer* unless otherwise noted).

⁵⁶ Fraunce, *Arcadian Rhetorike*, sig. 17r; Wilson, *Arte of Rhetorique*, fol. 119r.

One pipes out his woordes so small through defaulte of his wynde pype, that ye woulde thinke he whistled. [An]other speakes, as though he had Plummes in his mouthe. [Some] blowes at their noistrelles. [Some] gruntes lyke a Hogge. Some cackels lyke a Henne, or a Jack Dawe. [Some] whynes lyke a Pig. [Some] noddles their head at every sentence. An other winckes with one [e]ye, and some with both . . .

And so on: Wilson offers over forty examples, providing such suggestions for correction as “gaping wyde, or singyng plaine song, & counterfeityng those that do speake distinctly,” or putting stones under one’s tongue like Demosthenes (fol. 119r–v). Or one could use a music teachers’ trick: gag children’s mouths to train them to pronounce words distinctly (though, regrettably, “the love . . . is gone of bringyng up children to speake plainly” so no one gags them today) (fol. 119v).

The aims of such correctives are those we have seen again and again in discussions of delivery and of courtroom demeanor generally. Stressing the importance of “Voyce, Countenance[,], Gesture,” repeating the classic stories about Demosthenes and Cicero, the manuals insist that delivery “speaks”: “as the Tongue speaketh to the Ear, so the Gesture speaketh to the Eye,” writes William Phillips in his *Studii Legalis Ratio, or, Directions for the Study of the Law* (quoting Bacon).⁵⁷ They insist that delivery must be not only “soun[d]” but “swee[t],” for pleasure is a vehicle of persuasion.⁵⁸ They insist that it convey emotion, though not too much emotion for the lawyer must observe “decorum,” preserving a “Manly moderation of the Voyce, Countenance and Gesture, &c,” and thus must neither feel nor show excess passion.⁵⁹ They list the traditional dangers of excess emotion, but with a renewed emphasis on avoiding indecency and ensuring that one does not become an object of ridicule. “[E]ven in the heat of disputation,” explains Fulbecke, you “must bee free from anger” because anger can lead you “both to give and suffer undecent speeches.” Be neither “drye and faynt” in your delivery, nor “importunate[ly] garrul[ous]”: such garrulity is “troublesome” to one’s adversary, “to the Judge loathsome, [and] to thy selfe shamefull.” In “all thynges *decorum* must be observed,” he explains, “least that which wee saye, doe turne to laughter, or loathing, and purchase the name of folly.”⁶⁰ As

⁵⁷ Phillips quotes Bacon’s *Advancement of Learning* without attribution (see *Advancement* [2000 ed.], 94 [Bk 2]). Bacon attributes the quote to James I. See Chapter 5, 208.

⁵⁸ Phillips, *Studii Legalis Ratio*, 19; Doddridge, *English Lawyer*, 25.

⁵⁹ Phillips is extreme in insisting that one “avoid *all* passion, and shew thereof,” advice that seems to contradict the entire rhetorical tradition’s stress on the use of expression of the emotions for persuasion. He argues that passion “puts all into confusion”; it “discomposeth the Speaker”; it takes away “the force and weight” of the speech, putting it “out of joint”; “[i]t taketh away the grace of the delivery” (*Studii Legalis Ratio*, 21–2).

⁶⁰ Fulbecke, *Direction or Preparative*, fol. 40r, 42v. (Fol. 42v–43r is missing in the EEBO 1600 edition, but can be found online in the identically foliated 1620 edition). Perhaps Fulbecke borrows from Fraunce’s warning that anger leads to indecency: beware of “fall[ing] to threatning and railing with undecent tearmes” (*Lawiers Logike*, fol. 101v).

Doddridge insists, you must *never* become “the subject of dirision” (33). Phillips echoes Doddridge when he stresses that the student must develop “a Delivery full of Dignity, without Affectation, . . . and set forth with Gravity” (20). “Gravity” (says Phillips) is in fact, the “first” of “the Moral Qualifications requisite in our Student”: the quality “best becoming him” because law is a profession that inherently “laies claim” to “Gravity” (38).

The Noble Arts and Courtroom Carriage

“Gravity,” however, had to be accompanied by “grace” in “delivery,” “discourse,” and “disput[ation],” as the manuals stress.⁶¹ Learning such grace required training and practice: among the reasons that students in the Inns learned not just law but singing, dancing, fencing, deportment, and dress. For Fortescue and others, such lessons were essential to inculcating all the “cōmendable qualities requisite for Noblemen.”⁶² University students strove to acquire such skills as well.⁶³ Oxford professor (and Bishop of Salisbury) Seth Ward noted that, in order to become “Rationall and Gracefull speakers, students often undertook “lighter Institutions and Exercises” before “[t]heir removall [from] hence [to] the Innes of Court.”⁶⁴ Both the Inns and the universities normally condoned such studies: according to university tutors, dancing was “an exercise well beseming a gentleman and noe hindrance to his study,” and a good singing voice was “a qualitie in it selfe not to be discomended.”⁶⁵

A romanticized account of the Inns in Gerard Legh’s *Accedens of Armory* (1562) suggests the importance of such skills to the practice of law. In the Inner Temple, he writes, there is a

store of Gentilmen of the whole Realme, that reparaire thither to learne to rule, and obeye by lawe, [and] to use all other exercises of bodye and minde [to] adorne by speaking, cou[n]tenaunce, gesture, & use of apparel, the person of a gentleman.⁶⁶

Training in speech, countenance, gesture, and mode of dress is at once training in delivery and a status “adorn[ment]” that fashions the student into a representative

⁶¹ See e.g. Phillips, *Studii legalis*, 22; Fulbecke, *Direction or Preparative*, fol. 39r.

⁶² Fortescue, *De laudibus legum Angliæ* (1616 ed.), fol. 114v (mentioning “sing[ing],” “all kinde of harmony,” “dauncing, & other Noble mens pastimes”).

⁶³ Morgan and Brooke, *History of the University of Cambridge*, 134, 139.

⁶⁴ Ward, *Vindicie Academicarum*, 50. Ward is actually complaining that such light exercises get in the way of studying natural philosophy, which is far more important.

⁶⁵ Quoted in Morgan and Brooke, *History of the University of Cambridge*, vol. 2, 138.

⁶⁶ Legh, *Accedens of Armory* (1568 ed.), fol. 119v. See Goodrich’s extended discussion of this incident in *Law in the Courts of Love*, 72–7 (stressing the symbolics of banqueting, i.e. “eating law”).

of the rule of law. As a form of discipline, it inculcates the self-mastery required of one who is law's representative (one who "obey[s] by lawe"). At the same time, such training gives the student the demeanor and "person of a gentleman" equally necessary to ruling by law. For Fulbecke, the law student must learn such "curtesie" for it

setteth in order, garnisheth and graceth the other giftes of the minde, without which they shoulde be unsavorie, and want applause. . . . This I commend to the student as a principall meane to gaine favour, love, and good entreatie.

(fol. 16r)⁶⁷

Observing lawyers in action in court showed students firsthand how important such physical training and lessons in personal appearance were to gaining "applause" in the actual practice of law. Attending the courts in session was an essential part of legal study in both the Inns and the universities. During term, common law students usually spent their mornings in Westminster Hall observing cases from the "crib": the specially designated area where they were close enough to get pointers from the judges.⁶⁸ Civil law students observed and trained in the extremely active university courts—which handled litigation and breaches of the peace involving anyone associated with the university—as well as in the various ecclesiastical courts in Oxford and Cambridge.⁶⁹ For civil law students, apprenticeship in the courts was the necessary transition between university and practice.⁷⁰ For common law students, carefully observing the courts might get one closer to serving as a serjeant in such courts.

One went, of course, to see how law worked and to hear the arguments, but also to see how grace, dignity, gravity (etc.) were to be expressed in the heat of courtroom argument. In the crib, one might be close enough to hear vocal intonations and

⁶⁷ See similarly Elyot's description of the importance of a man's "beautie or comelynesse in his countenance, langage and gesture," and "sobre demeanure, deliberate and grave {pro}nunciation, [and] excellent temperance," allowing his "wordes or countenances" to, in themselves, serve as "a fyrme and stable lawe" (Elyot, *Boke Named the Governour*, fol. 99r–v). For a helpful discussion of the specifically legal meaning of "courtesy," see Zurcher, *Spenser's Legal Language*, 163–4.

⁶⁸ Lawyers stressed the importance of observing both moots and courts (one reason, they argued, that the common law "universities" had to be in London). See e.g. Fortescue, *De laudibus legum Angliae* (1616 ed.), fol. 112v–113r; Buc, "Third Universitie of England," in Stow, *Annales* (1615 ed.), sig. Nnnn3r (pagnated as 969); and Phillips, *Studii Legalis*, 184. As Wilfrid Prest points out, this system of education-through-observation goes back at least to the time of the earliest yearbooks (*Inns of Court*, 131).

⁶⁹ See Shepard, "Legal Learning and the Cambridge University Courts," on the high volume of litigation in these courts and the constant presence of university law students as trainees and proctors there, as well as in the Bishop of Ely's Consistory Court and Archdeacon's Court in Cambridge and the Archidiaconal Court of Berkshire in Oxford. Many went on to become advocates in these courts, other ecclesiastical courts, or the admiralty courts.

⁷⁰ See Helmholz, *History of the Canon Law and Ecclesiastical Jurisdiction*, 223 (on the "year of silence" before ecclesiastical lawyers could practice, and their training through "repeatedly witnessing a court in session").

observe facial expressions and gestures. When Edward Waterhouse advises students “to repair on Court-dayes to the Courts, and there to take notes and observe,” he explains that they must observe not merely the arguments but also the “*carriages* of persons . . . therein,” which “is very advantageous to the profit of the Student, who there may learn much . . . to his after-improvement.”⁷¹ Some students apparently did so. Admitted to the Inner Temple in 1607, Thomas Wentworth spent seven years in “constant attendance” at the Star Chamber (according to one contemporary), gathering “many directions for his carriage toward the publick.”⁷² Simonds D’Ewes similarly regularly attended Star Chamber trials before his call to the bar, later recollecting his admiration for Francis Bacon’s “eloquent expression of himself and his graceful delivery” (though he lambastes Bacon’s for his “vices”).⁷³

Practicing Performance: Moots and Disputations

Rehearsal and Mimesis

If reading manuals, taking dancing and singing lessons, and observing trials was important to the law student’s education, what was most important (everyone agreed) was practicing what one had learned. “[P]ractise and exercise is all in all,” explains Fraunce.⁷⁴ “What maketh the lawyer to have suche [excellent] utteraunce?” asks Wilson. Answer: “Practise,” which “in all thynges is a soveraigne meane, most highly to excell” (fol. 3r). “[E]very art by continual exercise doth receive increase,” writes Fulbecke, but law is a “*professio[n]* which *consist[s]* in practise,” so lawyers are especially in need of practice.⁷⁵ “[P]rivate and home exercise” might be helpful to the law student, he explains, but “publike exercise must ensue” (fol. 42r). For the law student must not “see[k] that in hymselfe, which is to bee done and performed in a multitude” (fol. 39v).

⁷¹ Waterhouse, *Fortescutus Illustratus*, 535 (emphasis added).

⁷² Quoted in Prest, *Inns of Court*, 131 (attributing the observation about Wentworth to Sir George Radcliffe).

⁷³ D’Ewes, *Autobiography*, 1:191, 1:220. (On Bacon, D’Ewes adds: “yet his vices were so stupendous and great, as they utterly obscured and out-poised his virtues” [1:191], presumably referring to his homosexuality and prodigality.) On the Continent, law students similarly attended the courts to learn delivery. Antoine Loisel noted that he went to the Paris Parlement as a student in the mid-sixteenth century to learn from *Advocat-du-Roi* Jean-Baptiste Dumesnil: it was he “whom I most wanted to resemble because of the purity and fluidity of his language, the grace and softness of his eloquence, his voice, and his delivery.” Loisel, *Pasquier ou dialogue des advocats* (1844 ed.), 83–4. French law students trained for several years as auditors (*escoutants*), watching trials in action and often modeling their own performances on those of the advocates. See Houlemare, *Politiques de la parole*, 170–1.

⁷⁴ *Arcadian Rhetorike*, sig. 17r.

⁷⁵ Fulbecke, *Direction*, fol. 41v (quoting the second-century jurist Ulpus Marcellus), fol. 39r (emphasis added).

[T]he Student of the lawe . . . must live in great celebrite in the assembly of the people, and in the midst of the common weale. Let him therefore enure himselfe from his youth, to frequent assemblies: let him not be afraide of men, nor appalled or tymerous through a shadowed kinde of life. (fol. 39r–v)

Study was pointless without practice. “[I]n vaine shall a man passe away the night without slepe, or the day without recreation, in vaine shall hee inquire after the opinions of the learned” if he does not practice “perform[ing] in a multitude” (fol. 41v, 39v).

In offering practice “perform[ing] in a multitude,” the moots were, effectively, rehearsals for courtroom performance. Moots, explains Fulbecke, are like the “smal skirmishes” that train young soldiers “for more valerous and haughtie proceedings.” Like soldiers, “Gentlemen students of the Law ought by domestical Moots to exercise and conforme themselves to greater & waightier attempts.” For “such a shadowed kind of contention doth open the way, and give courage unto [students] to argue matters in publike place and Courts of Recorde” (fol. 41r). As the publisher of *Choice Cases for Moots . . . Very Useful [for] Students of the Common Lawes* notes, “the well performances of private Exercises in the Inns of Court Conduce to the more Elaborate and Publick Arguings in Westminster-Hall.”⁷⁶ In fact, the moot system involved not one kind of rehearsal but a series of nested rehearsals (rehearsals for rehearsals): students began with the “smal[lest] skirmishes” (private rehearsals in their tutors’ chambers), and then went on to “waightier attempts,” which were rehearsals for still “waightier attempts.” Participants advanced by performing in a certain number of exercises of increasing difficulty.

The moots were “private” or “shadowed” insofar as they were mere rehearsals for the real encounters to come in the “Publick” sphere of the courts. But they did attempt, insofar as possible, to imitate the “Courts of Recorde” in Westminster Hall. Contemporaries touting their virtues stressed their likeness to real trials. In “all their open disputations,” explains the Bacon report, members of the Inns follow “the forme[s] used amongst the Judges and Serjeants.” One “Inner-Barreste[r]” (acting as “Serjean[t]”) is “as it were retained with the Plaintiff in the Action, and the other with the Defendant.” They “doe in *French* openly declare unto the Benchers” (acting as “Judges”) “some kinde of Action,” reciting the pleadings “by heart,” one “taking the part of the Plaintiff, and the other the part of the Defendant, . . . even as the Serjeants doe at the barr in the King’s Courts, to the Judges.”⁷⁷ The “forme[s]” the Bacon report cites referred to the forms of the pleadings. But they also implicitly referenced the material “forms”: benches that

⁷⁶ Hughes, *Hughes’s Quaeries*, sig. A3r–A3v (“To the Students of . . . *Graynes-Inn*, and of the rest of the Honourable Inns of Court”).

⁷⁷ Waterhouse, *Fortescutus Illustratus*, 544–5.

could be rearranged in the form of a courtroom, producing a bench, a bar, and a place for the make-believe “Serjeants” to face the make-believe “Judges.”

The historians who have looked specifically at university law faculty disputations stress two things: first, like moots, they served as practical training for courtroom argument; and, second, they were, in effect, “mock trials.”⁷⁸ Like moots, they began with a fictional legal case that gave rise to several disputed legal questions, each of which required a specific form of legal action. The disputants acted as litigants or lawyers arguing before a jurist acting as judge, who would give the decision or ruling at the end. Historians have suggested that the disputation form more generally may have emerged from legal disputations or mock trials in the university, and that it retained marks of its juridical origins even outside the law faculties.⁷⁹ They have noted the prevalence of legal terminology, metaphors, or structures in early modern disputations generally. For instance, the German educator Johann Conrad Dannhauer writes in his *Idea of a Good Disputator* (1629): “the roles of the respondent [are] like the roles of a defendant in court.”⁸⁰ The respondent was in fact sometimes called the “defendant.”⁸¹ When undergraduates performed disputed legal questions or disputations in the “*genre judiciali*” (as they often did), they were effectively practicing performing legal argument before a judge.⁸² Fraunce describes disputations generally as if they were moots or mock trials. They are “exercises” (the normal word for moots) that give students “particular practise” and serve as “triall[s] of their skil” in “civill assembl[ies].”

⁷⁸ See e.g. Fransen, “Questions disputées dans les facultés de droit,” 231–3, 275 (disputations were fictitious trials that prepared students for the practice of law); Freda, “Legal Education in England and Continental Europe,” 255 (disputations “were aimed at preparing the prospective lawyers for the court” [255]; “the role of litigants was taken by the students on both sides of the Channel” [258]); Weijers, *In Search of the Truth*, 164 (legal disputations treated “concrete problems of daily life”); Clarke, “Western Canon Law in the Central and Later Middle Ages,” 273–4 (the *causae* were designed to teach students how to solve legal problems they might face in court and may have served as the basis for moots [273]); Kantorowicz, “*Quaestiones disputatae* of the Glossators,” 1, 4–5, 20–21; Baker and Thorne, ed., *Readings and Moots*, 2:xvi–xviii (medieval law faculty disputations were structured like cases and involved hypotheticals meant to engage relevant legal issues); and, for the early modern period, Prest, *Inns of Court*, 116 (like the Inns, the English universities grounded formal teaching in aural exercises that involved debating a hypothetical case or set of circumstances involving one or more controversial questions of the law). Some Continental law professors staged mock trials quite similar to moots: for instance, Paulus Merula of Leiden had students learn the details of a case and then take turns playing the judge, prosecutor, defendant, and other roles in a trial (Ahsmann, “Teaching the *Ius Hodiernum*,” 429–8).

⁷⁹ Chang, “From Oral Disputation to Written Text,” 132; Kantorowicz, “*Quaestiones disputatae* of the Glossators,” 21; Rodda, *Public Religious Disputation in England*, 21 (on legal terminology and legal similitudes in early modern disputations generally); and Makdisi, “Scholastic Method in Medieval Education,” 645, 648–60 (disputations originated in Islamic legal debates).

⁸⁰ Dannhauer, *Idea boni disputatoris*, 98–9; quoted in Felipe, “Burden of Proof in Post-Medieval Disputation,” 43. See similarly Scharf, *Processus disputandi* (1635), 134; and see Felipe generally on juridical analogies in university disputations and the “jurisprudential analogies sometimes used to describe the roles and duties of the respondent and opponent, the status of the thesis, and the process of disputation itself” (40).

⁸¹ For an English example of the respondent as “defendant,” see Fraunce, *Lawiers Logike*, fol. 101r.

⁸² On advice to students performing in the genre “judiciali,” see Duport, “Rules to Be Observed by Young Pupils & Schollers in the University,” 329.

Fraunce's principal models for such exercises are Edmund Plowden's common law case reports, which he reproduces in lengthy law French excerpts.⁸³

Public Spectacle, Battle, Theatre, Farce

It was not merely practice performing that moots and disputations offered but practice "perform[ing] in a multitude." Contemporaries often referred to the more formal moots as "public exercises" or "open disputations."⁸⁴ For the "*grand Mootes* . . . performed at the Inns of Chancery, in the time of the *grand Readings*," as William Dugdale describes them, spectators came not only from all of the Inns but the broader legal community.⁸⁵ Sir Thomas Smith, Regius Professor of Civil Law in Cambridge, for instance, enjoyed attending the public exercises in the Inns, and seems not to have been daunted by the fact that they were largely performed in law French.⁸⁶ The public university disputations could draw still broader audiences, attracting not only spectators from across the academic community but family members, townspeople, and even London tourists.⁸⁷ Many such spectators would not have understood the words (in Latin), but there was plenty of pomp and ceremony to keep them entertained. For graduation day exercises in Cambridge, for instance, the bell would ring and the "Esquire Bedle"—the master of ceremonies (in a tall hat and gown carrying the mace)—would lead a procession arranged in order of seniority from the college to each of the schools, pausing at each door and declaring, "*Segnour Doctour, bona nova, bona nova* [good news, good news]." All would then proceed to the disputation site and (as one account describes it) "whan the Doctour is enteriede the chayer," a kind of tribunal, "the Responsall shall enter hys stall [and] make Cursy to hym, & after turne them to the Responsall, & make Cursy to hym." Speeches and prayers would follow before the disputants got to the main "Act": the disputation itself.⁸⁸

⁸³ *Lawiers Logike*, fol. 101r, 120r; and see the long selections from Plowden and other reporters in law French (fol. 12r–15v, 23v, 24v–25r, 26r–27r, *et passim*). Fraunce explains in his preface: the reason he is including examples "out of our Law bookes" is that "our Law is most fit to expresse the praecepts of Logike" (though he also includes poetic examples for those "who never learne[d] Lawe") (sig. ¶1v).

⁸⁴ For "open disputations" and "public exercises," see Waterhouse, *Fortescutus Illustratus*, 545, 532 (the student attends "frequent exercises both publick and private" [532]); and see e.g. D'Ewes, *Autobiography*, 1:218, 1:219, 1:221 (the moots are "public" exercises); Dugdale, *Origines Juridicales*, 290 ("Exercises, or other publick Occasions").

⁸⁵ On the "grand moots" attended by students from the other Inns and the broader legal community, see Dugdale, *Origines Juridicales*, 159–60, 243, 274–5, 281–2, 288, 313 (hereafter cited in the text); Baker, *Legal Profession and the Common Law*, 17; and Baker and Thorne, ed., *Readings and Moots*, 2:xxv.

⁸⁶ See Smith's Inaugural Oration, whose Latin text is excerpted in Maitland, *English Law and the Renaissance*, 90.

⁸⁷ Haugen, "Imagined Universities," 323; and on the graduation disputation ceremonies generally, see Shugar, "St. Mary the Virgin," 315; and (for Continental universities) Weijers, *In Search of the Truth*, 164.

⁸⁸ Costello, *Scholastic Curriculum*, 16 (describing the account in Esquire Bedell Matthew Stokes's book).

Even with their more limited audience, the “public” exercises in the Inns involved similar solemn ceremonial. At the Lent readings, for instance, the Reader would avoid being seen in public for a week so “that his entrance may be with the more state,” explains Dugdale. He would then appear in the Church “accompanied by [all the] Benchers [and] attended by [at least] twelve or fourteen Servants [in] one livery.” After parading to the Inns of Chancery, he would “tak[e] his place in the Hall, in a Chair, at the upper end of the Bench Table.” Challengers, which included “Judges or Serjeants at the Law [in] their purple Robes, and Scarlet Hoods,” were positioned at fixed locations in the hall, ready to take him on. When the reader had completed his task, “the young Students, and many others, do usually accompany him for [his return] journey, bringing him forth of the Town, with great state and solemnity.”⁸⁹

Performing for such public audiences, disputants (in both disputations and moots) sought not only to win, but to win applause (whatever form that might take). “Be over carefull to performe your Acts well,” advises Holdsworth, “that you may be encouraged by the applause” (2:653). Performance skills were, as always, essential. We have already seen James Duport’s admonition that one must not perform disputations “as if you performed them *per formam* only,” and he adds specifics similar to those in the manuals. “In your disputations, be not too cold, & faint, nor yet too hot, & fiery, fierce, and wrangling . . . [A] sober, calme, sedate deportment of speech is best even in disputing” (330). Theatrical training helped. In his *Apology for Actors* (1612), Thomas Heywood claimed that university theatre taught the “bold Sophister, to argue *pro et contra*” in “publicke exercise[s]” with “judgement,” to “keepe a decorum in his countenance” and not “to buffet his deske like a mad-man.”⁹⁰ According to Sir Thomas Smith, such ideals—boldness but decorum, liveliness but calm—were not merely prescriptive but in fact described the performances he saw, both in Cambridge disputations and in the moots he attended in London. The Inns may be “remote . . . from our university’s education,” but “you would not find missing from them the vigor of your dialectic or the splendor of your eloquence,” he declared in his inaugural address as Regius Professor of Law in 1542. “Dear God! . . . with what ease and abundance, with how much grace and beauty” they perform in the moots, in a style that is “calm and impartial and flowing as a fluid stream,” a style (he implies) that is just as graceful and beautiful as that of Cambridge disputations.⁹¹

⁸⁹ Dugdale, *Origines Juridiciales*, 206, 208.

⁹⁰ Heywood, *Apology for Actors*, sig. C3v–C4r.

⁹¹ “At vero nostrates, et Londinenses iurisconsulti, quibuscum disputare, cum ruri sim et extra academiam, non illibenter soleo, qui barbaras tantum et semigallicas nostras leges inspexerint, homines ab omnibus suis humanioribus disciplinis et hac academiae nostrae instructione semotissimi, etiam cum quid e philosophia, theologiave depromptum in quaestione ponatur, Deus bone! quam apte, quamque explicate singula resumunt, quanta cum facilitate et copia, quantaque cum gratia et venustate, vel confirmant sua, vel refellunt aliena! Certe nec dialecticae vim multum in eis desideres, nec

Unfortunately, not all disputants had learned these lessons, or perhaps none of them had. For only in idealizing accounts like Smith's do the performances appear "calm and impartial." "[A]dmit your ignorance[!]" cried the defendant, an undergraduate named Boyes, in the heat of a c.1600 Cambridge disputation on the criminological question: does the threat of punishment deter crime? "[Y]ou are overwhelmed with the force of [my] argument," cried the attacker in response. "[T]hink up some way of escape" if you can, with your "cunning and twisty" "verbal juggling[!]" he taunted. "The glory of the stage is the actor, of the lecture room the philosopher," so enough with the theatrics! sneered Boyes. "Either carry on the disputation as befits the part you are playing, or be quiet"! But as soon as Boyes had done with one opponent, up rose the second, with the war cry: "I will slit your throat with your own sword" (*Tuo gladio jugulabo!*)⁹² Describing the civil law disputation staged for Queen Elizabeth in 1566, Oxford college dean John Berekblock captures the atmosphere typical of even more ordinary disputations: the proctors "impelled [the] usually peace-loving men into battle." The first attacker "flew without delay" at the defendant with "exceptional intensity," drawing "admiration from all" (not least the Queen) "for his vehemence and thirst for victory." After him, "the next soldier in the battle line" "hunt[ed] [the respondent] down and [was] hard on his heels," so "no matter which way he turned" there was no escape.⁹³

While ferocious (or perhaps because ferocious), disputations could also be highly entertaining. In a letter to Sir Dudley Carleton after he attended a series of disputations performed in Cambridge for James I in 1614, John Chamberlain assessed the quality of the "acts" in terms one might use to describe a variety show: "the divinity act was performed reasonably well, but not answerable to the expectation; [and] the law and physic acts stark naught." (The "philosophy act," however, "made amends" by featuring a dispute about whether dogs could make syllogisms, which James apparently interrupted by speculating on his own dog's syllogistic thinking, imagining the dog saying to himself something to the effect of: I rout a hare, I realize I need help, I bay to call the pack; how can "this [be]

eloquentiae splendorem. Eorum oratio est Anglicana quidem, sed non sordida, non inquinata, non trivialis, gravis nonnunquam et copiosa, saepe urbana et faceta, non destituta similitudinum et exemplorum copia, lenis et aequabilis, et pleno velut alveo fluens, nusquam impedita." Smith, Inaugural Oration, in Maitland, *English Law and the Renaissance*, 89–90. Smith is urging students to study civil law, arguing that if common lawyers can perform with such "grace and beauty" in barbaric law French, Cambridge students steeped in rhetoric can do still better.

⁹² Rembert, *Swift and the Dialectical Tradition*, 200–1; and Costello, *Scholastic Curriculum*, 21. I have selectively excerpted for effect. This is the only Cambridge disputation for which we have a complete transcript. See the discussion in Costello, 19–24; and Rembert's excerpt and translation of the first opponent's disputation on the first question (198–201). Boyes' task was to attack the syllogism: "Where knowledge of a thing suffices, experience of the thing ought more than suffice. But even the experience of punishment is not sufficient deterrent. Therefore, much less the threat of punishment" (Costello, 21).

⁹³ For the account by Berekblock (or Bearblock), see Plummer, ed., *Elizabethan Oxford*, 115–50; translated in Shugar, "St. Mary the Virgin," 339.

contrived and carried on without the use and exercise of understanding”? asked the king. Ironic, said the moderator, for “whereas in the morning . . . the *Lawyers* could not [make *Syllogisms*], now every Dog could, especially his Majesties.”⁹⁴

Audiences seem to have treated disputations as a cross between theatre and blood sport. A Cambridge decree of 1600 orders there to be no more “standinge upon stalles, knockinge, hissinge and other imoderate behaviour” during the disputations. One Oxford don complains of “the great riots, tumults, abuses and disorders at [the] time of disputations in schooles.”⁹⁵ In a sweeping attack on disputation as a practice in 1624, Pierre Gassendi captures the combination of violence and theatricality that seems to have characterized not only those in Oxford and Cambridge but disputations on the Continent as well. The disputants’ behavior

make[s] disputations into public spectacles, so that the common people attend as spectators, and all that matters is the urge to conquer. [In these] theatrical gatherings, you can see [the disputants’] minds becoming so fevered that they . . . do everything but throw sticks and stones in their frenzy . . . Who could restrain his laughter when he sees how one of these gladiators, when reduced to desperation, will confuse the issue with shouting and even entertain the audience with taunts so that they break into applause while he is speaking?

For Gassendi, the disputations are gladiatorial contests in which the “fevered . . . frenzy” of the combatants, determined to “conquer” their enemies, satisfies the spectatorial blood lust of the “common people.” At the same time, these “public spectacles” are “theatrical” events in which the performers “entertain the audience” until “they break into applause.”⁹⁶

Impersonation, Make-Believe, and the Mise-en-Abîme

Accounts of the exercises in the Inns are quite different. According to all reports, these were serious affairs. As Buc describes the Lent and August readings, they were “performe[d] with much magnificence, and solemnity.”⁹⁷ Most sources seem to confirm this portrayal: the moots were serious; mooters argued law and only law; no one insulted opponents or made the audience laugh. But the insistence

⁹⁴ Hardwicke, *Miscellaneous State Papers*, 1:395; Costello, *Scholastic Curriculum*, 24–6.

⁹⁵ Morgan and Brooke, *History of the University of Cambridge*, vol. 2, 129–30.

⁹⁶ Gassendi, “Exercitationes paradoxicae adversus Aristoteleos,” in *Opera omnia* (1658 ed.), 3:106; trans. Haugen, “Imagined Universities,” 333 (translation modified).

⁹⁷ Buc, “Third Universitie of England,” sig. Nnnn2v (paginated as 974); and see sig. Nnnn3r (paginated as 969).

of people like Buc that moots *were* in fact disputations raises a question: how different were they? We know that students in the Inns were often very badly behaved. They engaged in “excesse of entertainment” during the Lent readings; “br[o]ke open the doores of the hall, butterie and kitchin [and] sett up comons and playe.”⁹⁸ We know that they misbehaved in lesser ways in the moots: they routinely failed to know their parts “without book” (stumbling or reading from crib notes); they came to moots booted or wearing hats; they entered the buttery and kitchen against orders; they failed to show up (a “Moot-fayl”) or sometimes outright refused to moot.⁹⁹ On at least one occasion, a mooter became so belligerent that his next scheduled opponent was too terrified to show (“his heart failed, and he sent word he was sick”).¹⁰⁰ The moots were “quarrels” that the students fought “with weapons both offensive and defensive.”¹⁰¹ Perhaps the moots were not always so “calm and impartial.” Perhaps they were not always so magnificently solemn either.¹⁰²

Certainly, they had an element of ritual solemnity, but with a good deal of theatre thrown in. In Middle Temple moots—whose general procedures appear typical of moots generally—the students who were to play plaintiff and defendant would approach those who were to play judges (lined up at a bay window “according to their antiquity”), make “a low obeysance,” and ask “whether it be [the judges’] pleasure to hear a Moot,” in a kind of prologue that announced the start of the play.¹⁰³ The bay window was one of several places in the hall invested with ritual significance, along with the “screen” (the great oak partition that lined the entrance), buttery door (behind the screen), and “cupboard” (table where utter barristers could be “called to the bar”) (fig. 6.1).¹⁰⁴ These served as important stations in the choreography of the exercises, which required considerable agility and lightness on one’s feet. (All those dancing lessons must have helped.) In the Inner Temple “imparlance exercise,” for instance, “the pannier-man blows the horn . . . immediately after supper,” an utter- and inner-barrister leap “behind the screen,” then pop out again and return to the forms, then soon jump up again and head toward the screen, followed by a train of twelve inner-barristers and at least six utter-barristers, all of whom now crowd behind the screen. There is also some going up and down: all the inner- and utter-barristers “go down and attend behind the screen, and as the bench comes down they all go up.” At that point, the three “judges” rise, go to “the buttery door” (which served as “Sanctuary” for offenders who had missed dinner), and “se[t] their backs against [it],” critiquing the mootmen’s performances as they bar the door (as if to say, we are the law! no

⁹⁸ Prest, *Inns of Court*, 108; Baker, *Oxford History of the Laws of England*, Vol. 6, 462.

⁹⁹ See e.g. Dugdale, *Origines Juridiciales*, 148, 199, 213, 244, 279–80, 282–83, 289, 314–15, *et passim*.

¹⁰⁰ D’Ewes, *Autobiography*, 1:302.

¹⁰¹ Plowden, *Plowden’s Quaeries*, sig. A4v.

¹⁰² See Del Mar, “Ludic Legal Pedagogy,” on their “ludic quality.”

¹⁰³ Dugdale, *Origines Juridiciales*, 208–9.

¹⁰⁴ Gray’s Inn Hall in Fitzgerald, *Picturesque London*, 112.



Fig. 6.1 Gray's Inn Hall with tables, benches, cupboard, and screen used in "performance . . . exercises."

Fitzgerald, *Picturesque London*, 112. The Bodleian Libraries, University of Oxford, G.A. Lond. 4° 164, 112.

sanctuary!) The mootmen attempt a defense (from amidst the crowd behind the screen?) Everyone eventually goes home. And the next day they do it again (with variations): "the horn blows," all the students and utter-barristers go behind the screen, and so on.¹⁰⁵

I have deliberately left out the legal content here, in part because it does not map easily onto procedure in the exercises, in part in order to highlight all the "going and coming" (as the text calls it): behind screens and against doors, up and down levels. But legal content started, of course, with the case. Cases were fictional

¹⁰⁵ Inner Temple "imparlance exercise"; reproduced in Baker and Thorne, ed., *Readings and Moots*, 2:cxci–cxcii. These exercises offered practice in asking for a continuance, compressing several different moments in a proceeding. The buttery had special significance. As Dugdale explains, normally, only "ancients" were allowed to enter it (279), but the buttery also served as a sanctuary: "If any offender escape from the Lieutenant into the Buttery, and bring into the Hall a Manchet [small wheat loaf] upon the point of a knife, he is pardoned: For the Buttry, in that case is a Sanctuary" (156–7).

and many were old: based on scenarios to be found in medieval moot-books.¹⁰⁶ The moot-books contained stories repeatedly retold in variant forms (like *com-media dell'arte* scenarios or early modern plays), featuring such pre-Reformation figures as monks, abbots, and prioresses alongside stock characters—"Kate Pan," "Cat ith' Panne," "John a Style"—which made the cases seem like a cross between fairy tale and farce.¹⁰⁷ They often had baroque plotlines filled with improbable events, superfluous details, surprise characters ("the stranger"), sudden twists of fate, and more bastards than could possibly ever have come before courts of law.¹⁰⁸ In one Inner Temple exercise from around 1590, for instance, "John Style" has died childless, so the land (says the plaintiff) reverts to him, but (plot twist) Style's "wife [was] secretly pregnant with a son who was afterwards born and is still alive at Dale," not (it turns out) a bastard, so, too bad for the plaintiff: he's out on his ear.¹⁰⁹

All of this puts a slightly different spin on the Bacon report's enthusiastic assertion that the mooters behave "even as the Serjeants doe at the barr in the King's Courts."¹¹⁰ (Defending "John Cat ith' Panne" against a monk who was the brother of the prioress who was the secret love child of the stranger who, it turns out, had willed the property to the woman justice of the peace, and so on, was not the kind of case that usually came before the royal courts.)¹¹¹ The simile—"even as . . ."—marked the likeness, but also the difference: "as it were retained with the Plaintiff" was not the same as "is." In "taking the part of the plaintiff [or] defendant," mooters rehearsed the roles they hoped one day to assume as lawyers. But the fact that such impersonation was, visibly, mere impersonation underlined the make-believe quality of the whole ritual.

In fact, the impersonations required a hefty suspension of disbelief. For starters, the two junior mootmen, who generally appeared as sidekicks of the more senior

¹⁰⁶ Baker and Thorne, ed., *Readings and Moots*, 2:lii. Cases disputed in the university law faculties were similar in this respect. They came largely from classic texts of Roman-canon law, so the parties and other characters invariably had Roman names—Titius, Sempronius, Seia—sounding much like characters in Roman plays.

¹⁰⁷ Baker and Thorne note that to turn "cat in pan" meant to flip something suddenly, as in a case or a legal argument. (They include a sketch from one of the moot-books of a cat being flipped in a pan, identifying the case.) *Readings and Moots*, 2:xliv.

¹⁰⁸ For examples of monks, abbots, and friars in seventeenth-century moot-books, see e.g. Clayton, *Topicks in the Laws of England*, 17, 27, 40, 45, 48, 80, 82, 112–13; Gregory, *Gregories Moot-Book*, 3, 8–10, 17, 21, 519, 650, 724–5, 765; Plowden, *Plowden's Quaeries*, 17, 88. On "Kate in the Pan," "Jacob and Esau," "Hobbe et John" (or variants), see Baker and Thorne, ed., *Readings and Moots*, 2:lii, 2:xli, 2:clxxxv–clxxxix. Examples of a "stranger" who appears on the scene are too numerous to list, but see e.g. Plowden, *Plowden's Quaeries*, 5, 18, 21, 36 (etc).

¹⁰⁹ Baker and Thorne, *Readings*, clxxxv–clxxxix.

¹¹⁰ For the Bacon report's comparison, see Waterhouse, *Fortescutus Illustratus*, 545.

¹¹¹ For my slightly parodic composite case, see the above citations. As Baker and Thorne comment: the stories reflected a "love of the improbable," full of "expectant heirs becoming monks and then inconveniently returning to life when claimed by deserted fiancées," and raising questions such as "whether a woman justice of the peace could send her own husband to gaol" or "how a person could be a villein every other day of his life and a free man on alternate days" (*Readings and Moots*, 2:lxii).

mootmen who argued the cases, represented the clients. But because these students recited the pleadings, they also represented those clients' attorneys. This made a certain kind of sense: it realized through performance the legal fiction that the attorney was not merely representing the client but *was* the client. But it required students to perform a double impersonation. For instance, in an Inner Temple exercise from c.1590, during the roll call (role call?), the court called the name of the plaintiff, "Thomas Massingberd," and the student acting as both "Massingberd" and the attorney for "Massingberd" answered "[h]ere by his attorney."¹¹² "Massingberd" was "[h]ere" in the person of his attorney, who was, of course, really a student pretending to be the attorney. The indexical invocation ("[here]") of the presence of the client emphasized the fact that the client disappeared in the attorney: the attorney was, for those purposes, the client. But it also emphasized the fact that the attorney was not really present either, only his student stand-in.

Certain moots multiplied such visibly layered impersonations still further by having students perform roles normally performed by more senior members of the Inns. For instance, during certain vacations (as the Bacon report explains), instead of benchers performing the role of judges, utter-barristers would "sit down on the bench in the end of the Hall, whereof [the benchers] take their name," where normally only benchers sat, and perform the role of benchers performing the role of judges.¹¹³ And instead of utter-barristers performing the role of serjeants, inner-barristers would perform the role of utter-barristers performing the role of serjeants, who, of course, represented their clients. This meant performing something like a play within a play within a play, in a dizzying representational *mise-en-abîme*. Since it took years to graduate to each level, mooters might engage in such rehearsals for rehearsals for years. Lawyers of all kinds certainly engaged in more oral argument in the Inns than they ever did in real courts. Some never succeeded in practicing in the central courts, or (in fact) any courts at all.¹¹⁴ So participants might slowly advance but never actually get past rehearsals. And even when they did, there was more make-believe to come. For the ceremony that created the serjeant-at-law involved an exercise very like a moot, in which the serjeant-elect and a senior serjeant played the role of parties in a feigned tenancy case.¹¹⁵ It must often have seemed like rehearsals all the way down.

¹¹² Imparance exercise, reproduced in Baker and Thorne, ed., *Readings and Moots*, 2:clxxxv–clxxxix.

¹¹³ Waterhouse, *Fortescutus Illustratus*, 545.

¹¹⁴ For the strict limits on the number of students the Inns could call to the bar, see Prest, *Inns of Court*, 53. While the Inns often ignored those limits, as Prest notes, "call to the bar was by no means an inevitable prelude to practice as counsel at the Westminster courts, or indeed anywhere else. Although 2,138 barristers were called by the four inns between 1590 and 1640, [a] list of practising counsel from the reigns of James I and Charles I includes only 489 names" (53).

¹¹⁵ See Baker, *Oxford History of the Laws of England*, Vol. 6, 421; and Baker, *Order of Serjeants at Law*, 91–2.

Through such performances, one fashioned oneself into a lawyer by first pretending to be one. In Baker's words, lawyers "created themselves, by performing the exercise[s]." In a sense, this is how all professionals create themselves. But the multiple layers of impersonation in the moots complicated matters. The student was not really the lawyer he pretended to be, a "professo[r] of gravitie" and "excellent and chiefe Pillar, prop and Ornament of his profession"; nor was he the client whom he was supposedly representing. The use of students' names as part of the fiction complicated things still further. The secondary characters might be "John a Style" and "Kate Pan," but the parties normally had the participating students' names. For instance, in the c.1590 Inner Temple exercise, the client "Massingberd" (present in the person of his "attorney") was, in fact, a student named Massingberd (the real Massingberd), pretending to be the client "Massingberd" in the person of his "attorney": in other words, Massingberd was pretending to be "Massingberd." In the moot, Thomas Massingberd became a fictional character: if he was not really the lawyer or the client, perhaps he was not even himself. Mooting strove to make the make-believe courtroom seem real, but it also made the real seem make-believe.

When a student playacted his fictional alter ego ("[h]ere by his attorney"!), even if he performed with poker-faced seriousness, the performance seems likely to have sometimes raised a laugh. The benchers appear to have frowned upon treating the moots as frolics in any sense. But there must have been a perpetual temptation to bring the mood of the revels into the moots: students were used to hamming it up in the revels, and it is not really credible to imagine them invariably rising above such temptations in the moots. Lessons in *ethopoiea* and *prosopopoeia* taught students how to project emotion through performance. Mooting offered superb opportunities for exaggerating emotion to the point of parody. If students used *each other's* names as parties (as they may have done), the performance could have been still funnier.¹¹⁶ For instance, the student answering that Massingberd was "[h]ere" might not be Massingberd, but a student doing an imitation of his friend Massingberd, who was in fact watching the impersonation from the audience. It would have been tempting for the students representing the plaintiff and defendant to switch names: so William Lockey, performing the role of plaintiff "Thomas Massingberd," might attack defendant "William Lockey"; and Massingberd, performing the role of defendant "William Lockey," might attack plaintiff "Thomas Massingberd." With nearly infinite possible variations and new crops of students appearing every year, such sport was unlikely to grow stale.

The same students who indulged in exuberantly obscene legal double-entendres in the revels would surely have at least cracked a smile at all the things "Kate Pan"

¹¹⁶ Baker writes that "members used each other's names as parties" (*Oxford History of the Laws of England*, Vol. 6, 458): he probably means that they used their own, but it seems quite possible that mooters indulged in the temptation to mix up the names to keep things interesting.

or “Cat ith’ Panne” (with her many bastard sons) could do to the other characters in the scenarios. In one case—“Le Virge,” or “The Rod”—what is at issue is a tenancy “by the rod” or “verge,” a word that had multiple meanings. It was a stick or rod that tenants held while swearing fealty to the Lord of the Manor, the tract of land to which this ceremony entitled them, and also, by the by, a slang word for “the male organ” (as the OED primly puts it).¹¹⁷ When the moot case was performed in 1529 (taking up all of the autumn vacation), the newly admitted inner-barrister John Tawe performed as the defendant “John Tawe,” who had penetrated this “verge” in violation of “the services which belong to the aforesaid verge,” and must come to Westminster to show “why the aforesaid verge” is his “verge” rather than, for instance, the “verge” of one of the plaintiffs, “Thomas Moigne” (played by utter-barrister Thomas Moigne). Since the land changes hands many times, the mooters must repeatedly insist (effectively): “the rod is mine!” Certainly in the revels, tenancy “by the verge” offered endless fodder for such jokes (often sophomoric, routinely sexist, raising a laugh even where not in themselves particularly funny). For instance, in the 1594–95 Gray’s Inn revels (which I discuss below), one of the Prince’s subjects holds a tenancy “in Tail-general” and another “by the Veirge,” where he provides the Prince’s entourage with “eight Loins of Mutton, which are sound, well fed, and not infectious,” as well as “Coneys” and other “dainty Morsels” (clear references to the “nuns” aka whores who are part of the scenario).¹¹⁸ Given the ubiquity of such jokes, could the students have simply ignored the repetition of the word “verge” (and the potential slippage between “verge” as rod and “verge” as virgin)? In fact, the creators of the scenario (utter-barristers) seem likely to have chosen the theme precisely because the jokes would make the lesson memorable.

Moots were, of course, not supposed to involve such madcap merriment: they were supposed to teach law. Fulbecke warns students categorically that they must not let their theatrical frolics creep into their training in lawyerly demeanor, in a passage that pilfers from Pico della Mirandola’s famous letter to Emilio Barbaro:

Rethoricke I graunt is a pleasant thing, and full of delite. But in professors of gravitie, neither comely nor commendable. Who would not allowe a tripping gate, nimble handes, glauncing eyes in a Stageplaier or dauncer. But [if] the

¹¹⁷ I derive details here from the 1527 Latin scenario (and its translation) in Baker and Thorne, ed., *Readings and Moots*, 2:clxxxii–clxxxv (and see the picture illustrating the case [2:xxxix]). I have modified the translation to represent the word the students would have used during the moot, the law French, “verge,” which the Latin renders as “*virgata*” and Baker and Thorne translate as “virgate.” For the law French “verge,” see Baker, *Manual of Law French*, 212 (the *Manual* does not include alternatives such as “virgate”). Baker, *Third University of England*, 15–16, offers a summary of the case that is quite different from the 1527 scenario, but even livelier (with a woman who marries a lord after giving birth to both a bastard and a legitimate son, who becomes a monk, and so on). On “verge” as a slang word, see the *Oxford English Dictionary* entry.

¹¹⁸ *Gesta Grayorum* (1688 ed.), 13.

professor of the Law should affect [this style], he should not speake like a Lawier *Cicero* when he treateth of matters of Law, speaketh like a Lawyer, and a Lawyer must speake as the Law doth speake.¹¹⁹

Inserting the passage into a lesson about law students' professional training, Fulbecke transforms its meaning. Where Pico identifies law with rhetoric and theatre (all involve "sheer lying, sheer imposture, sheer trickery"), Fulbecke reclaims law as the vocation that stands *against* rhetoric and theatre. The aspiring "professor of the Law" is a "professo[r] of gravitie," quite unlike "Stageplai[er]s] or dauncer[s]," with their "tripping gate, nimble handes, glauncing eyes." To "celebrate the feast of *Bacchus* in the Temple of *Vesta*" (that sacred Temple that is the storehouse of the law) is to dishonor law (fol. 20v). In the guise of urging the student to "speak like a Lawier" (a language that may be "rude in sound, yet [is] preignant in sense" [fol. 21v]), Fulbecke here revisits his earlier warning against "voluptuousnes," "lust," and "unlawfull delights" generally: beware "the feast of *Bacchus*"; beware the "Stageplai[er] or dauncer." The pleasure that students in the Inns took in theatre was proverbial. Fulbecke seems to realize that prohibiting them from attending theatre would be futile.¹²⁰ But, a warning:

O delicate fellow, when you go to the Theater or dauncing Schoole repose your selfe wholly in your eares, but when you come to heare matters of weight handled & discussed, rest not upon your senses, but upon your mind & understanding.
(fol. 21v–22r)

Go to the theatre if you must. But do not be carried away by the "tripping gate, nimble handes, glauncing eyes [of] a Stageplai[er] or dauncer." Do not let your senses ("voluptuousness," "lust," "unlawfull delights") carry away your judgment. And do not, above all, bring theatre into the Temple of Law.

Theatre in the Temple of Law: What the Revels Taught

Defending Academic Theatre: Impersonation and Dissimulation for Lawyers

The theatre had, of course, long been in the Temple of Law, not merely figuratively but literally: in the Inns' "Christmas" revels; in university plays associated with the

¹¹⁹ Fulbecke, *Direction and Preparative*, fol. 20v–21r. (Fulbecke does not credit Pico.) On Pico's letter, which itself draws on Quintilian's distinction between the advocate-orator and the dancer (Quintilian, *Orator's Education* [Loeb], 5:131 [11.3.88]), see Chapter 5, 217–18.

¹²⁰ For the avid theatrical attendance of students in the Inns, see e.g. Nash, *Pierce Penilesse*, sig. F3r; Prynne, *Histrio-Mastix*, sig. **3v ("one of the first things" the "Innes of Court men . . . learne as soone as they are admitted [is] to see Stage-playes").

law faculties and colleges. Both Inns and universities generally condoned such activities, but not everyone was happy about it. Lady Anne Bacon wrote to her son Anthony at Gray's Inn in 1594: "I trust they wyll not mum nor mask nor synfully revell at Grayes Inne."¹²¹ There were those who shared Lady Bacon's view that to "mum," "masque," or "revel" in law school (or any school) was sinful. Perhaps the most vociferous of these was John Rainolds, a lecturer in Greek and Divinity at Oxford, and Dean of Lincoln College. In the 1590s, Rainolds engaged in a series of nasty battles with colleagues over university theatre. His attacks were the usual antitheatrical ones: theatre trained students in vice, idleness, lying, and cross-dressing. (He himself, he confessed, had been guilty of that sin in his youth when he shamefully played the role of Hippolyta before the whole court).¹²² His two principal antagonists were both law professors: William Gager (who, as we saw, directed students in his own Latin plays); and Alberico Gentili, Regius Professor of Civil Law at Oxford and future member of Gray's Inn. When Gager decided he had had enough quarreling, Gentili took over, and he and Rainolds carried on a series of highly public attacks and counterattacks in letters, lectures, and treatises. These included Gentili's *Two Disputations: On Not Censuring Actors and Audiences of Fictional Representations*; and *On the Abuse of Lying* (delivered as lectures in 1597 and published in 1599); and Rainolds' *Th'Overthrow of Stage-Playes* (1599), which incorporated some of Gager's and Gentili's letters with all of Rainolds' responses.¹²³

The dispute was about academic theatre for university students generally, but Gentili stresses his role as a lawyer and teacher of law who is invested in training future lawyers. He is engaging in the controversy, he explains, not as a theologian

¹²¹ Bacon, *Letters of Lady Anne Bacon*, 198.

¹²² Boas, *University Drama*, 232–3 (with a thank you to Daniel Blank for first calling my attention to this controversy); and see Blank's "Actors, Orators."

¹²³ Briefly, the controversy began when Rainolds refused to attend the performance of three of Gager's Shrovetide plays. A virulently antitheatrical character named "Momus" and an epilogue that mocked Momus' views appeared in the plays. Rainolds (probably correctly) assumed that he was the target. Gager published *Momus* as an appendix to his *Ulysses Redux* (1592). He and Gager began to exchange angry letters. Gentili entered the fray by publishing a defense of poetry and of acting grounded in arguments from civil and ecclesiastical law: *Commentatio ad Legem III Codicis de professoribus et medicis* (1593) (*Commentary on the Third Law of the [Justinian] Code* "On Teachers and Doctors"). Gentili's lectures (published as *Alberici Gentilis Disputationes Duae: I. De actoribus & spectatoribus fabularum non notandis. II. De abusu mendacii*) and Rainolds' *Th'Overthrow of Stage-Plays* followed.

Gentili is primarily known today for his foundational *De Jure Belli* (*On the Law of War*). He was an Italian convert to Protestantism who fled Italy, began teaching at Oxford, and was named Regius Professor in 1587. He had worked as a lawyer and judge in Italy, and continued to practice law in England. See note 4, above.

On *Momus* and for the translation of some of Gager's letters, see Young, "Elizabethan Defence of the Stage" and "William Gager's Defence of the Academic Drama." For a translation of the Gentili-Rainolds letters, see Gentili and Rainolds, *Latin Correspondence*. I have used J. W. Binns' translation of Gentili's "Commentatio ad Legem III" in Binns, "Alberico Gentili in Defense of Poetry and Acting," 229–72 (hereafter, "Commentatio"). I am grateful to Francesco Cassini for assistance with translations from Gentili's *Alberici Gentilis Disputationes Duae* (hereafter, "Disputationes").

but as one whose job is to “teach the boys [as a] lawyer.”¹²⁴ In defending theatre, he “bring[s] [a] gift to those who study law, [and who] wish . . . to be rightly called, jurists”: the gift is a lecture on the law of theatre and a defense of university theatre.¹²⁵ His qualifications as a jurist make him an expert on the subject, he argues. Although divines like Rainolds may lay claim to expertise on the Scriptures, what is at issue here is the Commandments in “the second table,” which belong to the lawyers: those “are ours.”¹²⁶ He is ashamed of Tertullian, “whom they deem one of us lawyers,” for his “worthless” reasoning in his attack on “the buskined tragic actors and the fictive masks of the players” (reasoning no real lawyer would employ).¹²⁷ Gentili will show everyone what real legal reasoning looks like. By way of displaying his skills in legal reasoning, he proceeds to treat the debate as if it were a law faculty disputation on the question: is theatre legal? (A version of this question had in fact been the subject of an Oxford disputation in 1584.)¹²⁸ His style is at once combative and full of the kind of labyrinthine quibbling and verbal juggling typical of university disputations.¹²⁹ But if one looks past the truculence and the many layers of minute quibbles, two central claims emerge: university acting is legal under biblical, ecclesiastical, and civil law; the reason it is legal is that its educational utility outweighs its dangers.

Gentili’s two central arguments in defense of these propositions, which he elaborates most fully in his *Two Disputations*, are on their face fairly conventional. First, theatre teaches delivery. Supporting this claim, he quotes the same passage from Cicero’s *On the Orator* that Elyot does: the orator must have not only wit, wisdom, eloquence, and “the memory of [the] lawye[r],” but also “the voice of [the] tragedia[n] and the gesture[s] of . . . the finest acto[r].”¹³⁰ Second, theatre (particularly comedy) cures vice. Since teaching virtue requires representing vice, one cannot censure actors for performing depraved parts (for instance, a villain or “drunkard”).¹³¹ And, just as “the actor [must] sho[w] off at one moment bulky

¹²⁴ Gentili and Rainolds, *Latin Correspondence*, 39, 45.

¹²⁵ Gentili, “*Commentatio*,” 251.

¹²⁶ Gentili and Rainolds, *Latin Correspondence*, 39.

¹²⁷ Gentili and Rainolds, *Latin Correspondence*, 41.

¹²⁸ The question was, “should the theater be allowed in a well-governed state?” See Shugar, “St. Mary the Virgin,” 321–2.

¹²⁹ Gentili’s principal argumentative strategy throughout the dispute is what Puttenham calls “to confesse and avoid,” a “figure . . . much used by our English pleaders in the Starchamber and Chancery” (Puttenham, *Arte of English Poesie*, 190). Gentili hedges his arguments with disclaimers (probably as a defense against increasing antitheatricality in Oxford). His disclaimers make for confusing reading, since, in admitting the truth of many of Rainolds’ charges, Gentili often sounds as antitheatrical as Rainolds himself. However, all of his contributions to the dispute ultimately defend university theatre.

¹³⁰ “[I]n oratore non modo . . . memoriam iurisconsultorum, sed etiam vocem tragoediorum et gestus . . . summorum actorum requirit” (*Disputationes*, 108).

¹³¹ “[C]um de ebrio . . . incidisset oratio” (*Disputationes*, 8, and see 49–50); “*Commentatio*,” 269; and Gentili and Rainolds, *Latin Correspondence*, 61–3. Elyot offers a similar defense: “by the same argumente not onely enterludes in englyshe but also sermones, wherin some vyce is declared, shulde be to the beholders and herers lyke occasion to encrease sinners” (*Boke Named the Governour*, fol. 49r). Rainolds exaggerates these positions by way of parody: “you declared [stageplayers] positively necessary for the perfection of poetry, for the skill of oratory, for the curing of diseases of the body and the

Hercules, at another effeminate . . . Venus,” so the orator must “mimic [various] characters” and can do so without “incur[ring] disgrace.”¹³² In fact, it is not just actors and orators who take on different roles at different moments (his rhetoric implies): everyone does. “[E]veryone puts on the shoes of those they must represent”: everyone must, in the course of things, “reproduce characters, faces, words, and deeds.”¹³³

The view that role-playing is built into everyday life—that we must represent ourselves by reproducing the “characters, faces, words, and deeds” appropriate to our role—is, of course, implicit in the “theatre of the world” trope and in the more general rhetorical attitude often associated with Renaissance ideas about the theatre of everyday life. This attitude is captured in a famous passage in Thomas More’s *Utopia* (1516). Philosophy (More tells the impolitic Raphael) demands that we behave with Ciceronian “decorum” or “fittingness.”

[She] knows her own stage, and thus ordering and behaving herself in the play in hand, plays her part accordingly with comeliness, uttering nothing out of due order and fashion.

Performing the wrong role at the wrong time (he explains) would be like charging onto the stage during the performance of a comedy by Plautus and performing a scene from a Senecan tragedy.¹³⁴

Gentili may in fact have this passage in mind in “On the Abuse of Lying,” for there he calls upon a lesser-known passage in More to substantiate a similar point about role-playing. However, his account of the necessity of role-playing is actually far more radical than More’s. His fellow lawyer the “brilliant Thomas More” (he writes) notes that in “certain ceremonies” one must perform actions that do not represent one’s real thoughts, for instance, “when a bishop is created, he must refuse twice and say the third time that he accepts against his will.”¹³⁵ Is

vices of the soul” (Gentili and Rainolds, *Latin Correspondence*, 57). One of the things that particularly incenses him is that some of the actors in Gager’s *Rivales* portrayed drunkards (*Latin Correspondence*, 61–3).

¹³² “[H]istrion nunc Herculem robustum ostendit, nunc mollis in Venerem frangitur” (Gentili, *Disputationes*, 9).

¹³³ “[Q]uisque in eam se induit personam quam refert”; “Dico referendas esse oratori personas, referendos vultus, . . . dicta referenda et facta” (*Disputationes*, 9, 49). See, similarly, Julius Caesar Scaliger (one of Gentili’s heroes), more explicitly linking such representation with classical *prosopopoeia*: the poet, historian, philosopher, or orator “in judicial speaking” and elsewhere “injects personifications,” sometimes speaking “in his own person,” sometimes “in that of another” (Scaliger, *Select Translations from Scaliger’s Poetics*, 7).

¹³⁴ More, *Complete Works*, 4:99 (translation modified, drawing on More, [*Utopia*] [1551 ed.], sig. F5r–v). For a discussion of this passage and the “rhetorical attitude” generally, see Zurcher, *Shakespeare and Law*, 48.

¹³⁵ “[Q]ui creatur episcopus, bis negare habeat, id velle se, et tertio dicere, nolentem velle” (*Disputationes*, 153). Gentili is paraphrasing a passage in More’s “History of King Richard III”: “menne must sommetime for the manner sake not [show] what they knowe. For at the consecracion

this lying? Certainly not. “On the Abuse of Lying” pointedly extends the first disputation’s defense of “Actors and Audiences of Fictional Representations”: there is clearly a relationship between Gentili’s treatment of acting in fictional representations in the first disputation and his treatment of lying in the second disputation. Antitheatrical literature had, of course, long insisted that acting was a form of lying. In the *Commentary* on Justinian, Gentili had offered a classic riposte to the charge (similar to that in Sir Philip Sidney’s *Defence of Poesie*): poets and painters—and, by extension, actors—are not liars, for “both poetry and painting feign under the image of truth.”¹³⁶ But in “On the Abuse of Lying,” Gentili reverses the traditional charge. To “mimic characters” in the course of performing our roles, “to reproduce faces, words, and deeds,” “to put on the shoes of those [we] must represent” may *require* dissimulation. That is, doing our jobs right as actors on the stage of the world may require lying.

“On the Abuse of Lying” is, of course, purportedly a critique of the abuse of lying. But in the course of distinguishing use from abuse, Gentili ends up offering a ringing defense of the useful lie, elaborating on the many circumstances in which lying is not only appropriate but virtuous. Given the fact that he was Regius Professor of Law, and given his focus on law in the *Two Disputations*, Gentili could probably count on his colleagues and students to recognize the double meaning of “*Actoribus*” in the title of the first disputation: *actores* were actors, but also lawyers (advocates or prosecutors). Thus to defend *actores* from censure was to defend not only actors but lawyers. This passage might have recalled for some Raphael’s description in *Utopia* of lawyers as those who “instruct with deceit” or “disguise”: More’s defense of playing one’s part with decorum is, implicitly, a defense of the profession of law, with its necessary lies and disguises.¹³⁷ This view—only implicit in More but explicit in Gentili—is actually quite different from Sidney’s view that aesthetic feigning is distinct from lying. In defending poets (and, by extension, actors) from the charge of “falshood,” Sidney draws a famous analogy with lawyers. Some charge poets with pretending to “an actuall truth,” which, “not beeing true, prooves a falshood.” But (he asks), “doth the Lawyer lye then, when under the names of *John a stile*, and *John a noakes*, hee puts his case?” Sidney’s rhetorical question is clearly meant to draw an emphatic “no!” He explains: “[T]hat is easily answered. Theyr naming of men, is but to make theyr picture the more lively.”¹³⁸ But “On the Abuse of Lying” suggests that

of a bishop, every man woteth well” that the bishop “purposeth to be [a bishop]. And yet must he bee twise asked whether he wil be bishop or no, and he muste twyse say naye, and at the third tyme take it as [if he were] compelled ther unto” (More, *Complete Works*, 2:80).

¹³⁶ Gentili, “*Commentatio*,” 252. In the *Defence of Poesie* (also published as *Apologie for Poetrie*), written c.1579–80 but not published until 1595, Sidney famously argued that the poet “nothing affirms, and therefore never lyeth” (*Apologie for Poetrie*, sig. G4v).

¹³⁷ More, [*Utopia*], sig. O2r (“deceit” here is sometimes translated as “disguise”); More, *Complete Works*, 4:195.

¹³⁸ Sidney, *Apologie for Poetrie*, sig. H1r.

Gentili would have answered with an enthusiastic “yes!” Lawyers are also actors of “*fabulae*” (fictions) when they “pu[t] on the shoes of those they must represent”: they too are liars deploying the useful lie. Here, instead of deflecting the age-old charge that lawyers are by nature liars, Gentili heartily embraces it: yes, lawyers are liars; lying is essential to their role. Civil law “do[es] not condemn a necessary lie,” he insists, indeed it welcomes such lies. “This is the opinion of the jurists, [a]nd the jurists do not lie,” he adds with an implied wink, for, of course, he himself is a jurist: who can tell whether he is lying or not?¹³⁹

Gentili’s discussion of the virtues of professional dissembling may put a slightly different spin on the advice on appearances in manuals like Fulbecke’s or Phillips’. We have already seen that, for Phillips, the “first” of “the Moral Qualifications requisite in our Student” is an appearance of “Gravity.” How is he to “la[y] claim” to that moral qualification? He must work on his “outward behaviour, and the private and subtil motions and labour of [his] Countenance”; and he must “order [his] Gesture and Habit.”¹⁴⁰ Ordering one’s “Habit” here is, of course, a figure for all the ways in which the young lawyer must regulate his appearance. But to “order [one’s] Habit” is also, quite literally, to order a well-tailored suit. For “Behavior is as it were [a] Garment” (42), writes Phillips. It “ought to have the Conditions of a Garment; for it ought to be made in fashion, it ought not to be too curious, it ought to be shaped so as to set forth any good making of the minde, and hide any deformity” (42). Phillips thus draws all of the criteria for the lawyer’s behavior from the world of tailoring: it must be fashionable, but not so *ostentatiously* fashionable as to make one too remarkable (“curious”). It should highlight one’s assets and conceal one’s flaws. It should be artful, but the student must not try too hard to be artful. For “if . . . outward Carriage be intended too much, it passeth into Affectation” (39). It is essential to affect an absence of affectation.

In Phillips’ discussion of how to “speak” (and look) “like a Lawier,” he does not explicitly advocate lying. But he does advocate such layers of “pretend[ing]” (59) and “Dissimulations” (60) that, if they are not lies, they are very like. For instance, if the young lawyer’s behavioral “Garment” does not fully conceal his central flaw, he must actively “pretend the vertue that shadoweth it” (59), making a flaw appear to be a virtue. “[I]f he be dull, he must affect Gravity” (60) (advice which—given the importance of “Gravity” to projecting lawyerliness—makes the profession of lawyer well suited to the constitutionally dull). If the dissimulation of a virtue matching his actual flaw is insufficient to hide that flaw, the young lawyer must engage in a higher-order dissimulation: a dissimulation of dissimulation (reminiscent of the moots). He must pretend that he is merely *pretending* to be dull, incompetent, or lazy, but that he is in reality scintillating, skilled, and enterprising. And he must hint at some plausible reason for hiding these vast abilities, “to give

¹³⁹ “Sic iurisconsulti. Et ipsi tamen iurisconsulti non mentiuntur” (*Disputationes*, 153).

¹⁴⁰ Phillips, *Studii Legalis Ratio*, 38–9.

colour that his true wants are but . . . Dissimulations” (59–60). Doing so repeatedly should secure a reputation for secret virtue. And if *that* is still not enough, the student must use “Confidence, . . . the last, but surest Remedy”: a remedy that “doth fascinate and bind Hand and Foot, those that are either shallow or weak in judgement, which are the greatest Part” (60). In other words, you need not worry, for you have an audience of fools, so “pretending,” “Dissimulations,” and general bluster will turn you into a proper lawyer.

When Francesco Sansovino describes Marino’s evil cousin in *The Lawyer* (1554) pretending that he has more cases than he can handle, it is satire.¹⁴¹ When Phillips describes precisely the same strategy, it is advice. The person one might imagine as the most pious and uncompromising lawyer of the seventeenth century—John Cook, soon-to-be-prosecutor of Charles I and enthusiastic regicide—describes the same strategy in his *Vindication of the Professors & Profession of the Law* (1646), a text that outlines “what manner of persons Christian magistrates, judges, and lawyers ought to be” (1646). But instead of attacking such charades as patent falsehoods, he fondly describes them as what we all do:

I cannot but smile many times, to see a company of hypocrites as wee are, stirring up and downe in our Gownes, making men believe that we are full of employment; and so we are indeed in a perpetuall motion, measuring the length of the Hall, [without] a Motion perhaps from the first day of the Tearme to the last.¹⁴²

He cannot help smiling that he too is a member of this “company of hypocrites.”

*The Trial of the Sorcerer in Gray’s Inn (1594):
The Lawyer as Lord of Misrule*

On December 29th, 1594 in the Gray’s Inn Hall, several hundred people assembled to observe the proceedings of a Commission of *Oyer and Terminer*—a criminal assize court—specially convened to try an alleged sorcerer. The crown charged him with having used witchcraft to cause the riot that had broken out at the revels the night before. The festivities (in honor of the Prince) had erupted into “Disorders” and “Tumults” so great that the guests of honor had fled, and all the long and careful planning had gone for naught. The “Lawyers of the Prince’s Council” had launched an investigation, resulting in indictments that “preferred Judgments thick and threefold” against the prisoner.¹⁴³

¹⁴¹ Sansovino, *L’avvocato*, fol. 6v.

¹⁴² Cook, *Vindication of the Law*, 40.

¹⁴³ *Gesta Grayorum* (1688 ed.), 22–3. Unless otherwise noted, parenthetical citations refer to this edition.

On the day of the trial, the jury that the Sheriff had impaneled—twenty-four men who were “to give their Verdict upon the Evidence”—seated themselves in the courtroom. The prisoner had been in the stocks, but a Lieutenant brought him to the courtroom, and there he was “arraigned at the Bar.” Standing before the jury and the assembled spectators, the Clerk of the Crown proceeded to read the indictments:

[The prisoner] caused the Stage to be built, and Scaffolds to be reared... to increase Expectation, [and] caused divers [people] of good Condition, to be invited to our Sports... [Then] he caused Throngs and Tumults, Crowds and Outrages, to disturb our whole Proceedings. And Lastly, [he] foisted a Company of base and common Fellows, to make up our Disorders with a Play of Errors and Confusions, [to our] Discredit... All which were against the Crown and Dignity of our Sovereign Lord, the Prince of *Purpoole*. (23)

The prisoner, however, protested adamantly that he was innocent, and begged that his petition to the court be read by the “Master of Requests” (Judge of the Court of Requests, where people who could not afford ordinary writs could sue).¹⁴⁴ The Master agreed and read the petition as follows:

[It was] the Knavery and Juggling of the Attorney and Sollicitor [that] brought all this Law-stuff on purpose to blind the Eyes of... all the honourable Court, ... mak[ing] them think, that those things which they all saw... actually performed, were nothing else but vain Illusions, Fancies, Dreams and Enchantments, ... wrought and compassed by the Means of a poor harmless Wretch, that never had heard of such great Matters in all his Life.

Moreover, said the petition, the Prince’s Council (made up largely of “Lawyers”) was guilty of “soundly mis-govern[ing]” the Commonwealth. All listened, and unfortunately many agreed: there had been “divers Instances of great Absurdities”; the petition’s allegations could not be denied. And so, in a dramatic reversal, “thereupon the Prisoner was freed and pardoned” and the Attorney, Sollicitor, Judge, and their legal collaborators (presumably the Prince’s lawyers) dragged off to the stocks.¹⁴⁵

¹⁴⁴ See Bland in *Gesta Grayorum* (1968 ed.), 98 note 28.

¹⁴⁵ The text says that “the Attorney, Sollicitor, Master of the Requests, and those that were acquainted with the Draught of the Petition, were all of them commanded to the Tower” (24), which means the stocks, since the “Stocks were graced with th[e] Name” the “Tower” (23). I interpret “those that were acquainted with the Draught of the Petition” as those who knew the Sorcerer was innocent but collaborated with the Attorney (etc.) in framing him (but it is equally possible that the identification of the guilty parties merely follows the nonsense logic of farce).

Scholars who are familiar with this mock trial, which the students of Gray's Inn staged during their Christmas revels in 1594–95, know it primarily for one reason: the “Play of Errors and Confusions” that the Sorcerer allegedly substituted for the planned revels (and that the “Company of base and common Fellows” performed) was none other than *A Comedy of Errors*. The “night of errors” (recounted in the *Gesta Grayorum*, the report on the 1594–95 revels) has received considerable critical attention. But there has been surprisingly little discussion of the trial of the Sorcerer. Those who do mention it tend to stress the fact that the Sorcerer is charged with the creation of theatrical illusions: in this view, what is on trial is the power of theatre itself as a form of “Sorcer[y] and Inchantmen[t].”¹⁴⁶ But, according to the verdict, at least, the Sorcerer is in fact merely “a poor harmless Wretch,” victim of a legal frame-up.¹⁴⁷ The people actually responsible for error, confusion, and falsehood are the lawyers: the Attorney, the Sollicitor, the Prince's Lawyers, and the Judge. Their “Knavery and Juggling” brought “all this Law-stuff on purpose to blind the Eyes” of the court. It is “Law-stuff” that is the real sorcery or illusionism.

“Law-sports” in both the Inns and universities were often, of course, full of “Law-stuff”: insider jokes burlesquing legal terminology (usually with scatological or bawdy connotations). We have already seen the obscene play on such phrases as “in Tail-general” and “by the Veirge.” In the *Gesta Grayorum*, several of the Prince's subjects similarly hold the town of Knightsbridge “by Villenage in base Tenure” (and are charged with cleaning all the “Sluces, Passages, strait Entrances, and dangerous Quagmires” and “laying Stones in the Pits and naughty places” of the “common High and Low-Ways”) (13). The “nuns” perform “Night-Service in *Cauda*” (“in the tail”). St. Giles is held “by Cornage in *Cauda*” (12), and Tottenham “in free and common Soccage, [by] rendring to the Master of the Ward rope so much Cunny-Furr as will serve to line his Night-Cap” (12).¹⁴⁸ Law-sports often burlesqued the kinds of real legal proceedings for

¹⁴⁶ See e.g. Nelson and Winston, “Drama of the Inns of Court,” 98–9 (the trial is about the revels themselves, which “frequently descended into chaos and a promiscuous mixing of the sexes; about the staging of plays . . . ; and about attitudes towards professional players, including Shakespeare's company”); and Whitworth's note in Shakespeare, *Comedy of Errors*, 4 (the “‘sorcerer or conjuror’ . . . was presumably the member of the Inn responsible for organizing the evening's entertainment.”; some think it may have been Francis Bacon). For additional brief discussions of the trial, see e.g. McCoy, “Law Sports and the Night of Errors,” 289 (the “trial echoes many of the themes of the play and concludes with the familiar reversals of feasts of misrule”); Cormack, “Locating *The Comedy of Errors*” (the trial and the revels generally were “jurisdictional exercise[s]” in which the Inns explored their own jurisdictional autonomy).

¹⁴⁷ If the verdict is correct, the Sorcerer did not produce the “Representations and Shews” or “Confusion and Errors,” and in fact the court charges him primarily with having *prevented* the planned entertainments, raising expectations for the theatrical evening and then dashing them (though, admittedly, also foisting the *Comedy of Errors* on them).

¹⁴⁸ For clarification of the meaning of these phrases, I am indebted to Bland's introduction to the *Gesta Grayorum* (1968 ed.), 95–7, which draws on John Cowell's law dictionary and offers many additional examples.

which students were training, offering (as Martin Butler writes) “both parody [and] homage.”¹⁴⁹ Through such burlesque, wrote the author of the *Gesta Grayorum*, “we . . . mock[ed] . . . at our own Follies” (24).¹⁵⁰

In both the Inns and the universities, such conjoined parody and homage targeted many social forms and practices, not solely legal ones. But there was a great tradition of lawyer satire in such plays as *Club Law* (c.1599–1600) or George Ruggle’s *Ignoramus* (1615) (both of them acted in Clare Hall, Cambridge).¹⁵¹ And general university traditions of revelry—particularly those associated with the public disputations—often offered legal lampoon. There, satiric speeches—sometimes in the form of mock disputations—were delivered by an officially designated student jester: in Oxford the “*terrae filius*” (son of the soil); in Cambridge the “*tripose*” or “prevaricator” (a quibbler, equivocator, or outright liar).¹⁵² These were highly theatrical. One member of the Cambridge community complained to Archbishop William Laud in 1636:

St Mary’s Church at every great Commencement, is made a Theater, & the Prevaricatours stage, wherein he acts, & setts forth his prophane and scurrilous jests besides diverse other abuses & disorders then offered in that place.¹⁵³

They also often took the form of legal satire, sometimes in the form of burlesque legal oratory. For the lawyer-playwright Thomas Baker, the *terrae filius* was a “University Jester” whose speech was “a sort of Law-Oratory without Truth, or Modesty.”¹⁵⁴ These “University Jester[s]” often targeted the officials responsible for enforcing the university’s legal regulations. For instance, the *terrae filius* sometimes took on the persona of the Bedell, who—in addition to being Master of Ceremonies in disputation processions—policed the university for curfew

¹⁴⁹ Butler, “Legal Masque,” 184.

¹⁵⁰ For a discussion of the precise parallels between mock legal proceedings and real ones (focusing on the arraignment of the lovers in *Le Prince d’Amour* [performed 1597–98] and Marston’s *Fawne*), see Finkelpearl, “Use of the Middle Temple’s Christmas Revels,” 201–5 (the “sequence of events at a regular trial was paralleled step by step” [202]).

¹⁵¹ *Club Law* satirizes the Cambridge town (versus gown), but one of its principal targets is John Yaxley, “a pretie pettifogging Lawyer [who will] drawe bloud of these gentle Athenians” (*Clare Hall*, xlii, 18). *Ignoramus* satirizes Cambridge Recorder and common lawyer Francis Brackyn. The lawyer satire is broad enough that Edward Coke also thought he was a target. See Chamberlain, *Letters of John Chamberlain*, 1:597–8.

¹⁵² On the mock disputations, see Henderson, “Erudite Satire,” 139–44. The “*tripose*” referred to a student reading for the undergraduate Tripos exam, but the name offered opportunities for jokes about being three-legged. The “prevaricator” served in graduate disputations, including those of the law faculty. On the long tradition of satiric disputation in European universities (reaching back at least to the thirteenth century), see Corbellari, *Voix des clercs*.

¹⁵³ Quoted in Nelson, *Early Cambridge Theatres*, 78 (and see Nelson on the persistent identification of the commencement stage as a “theatre,” from at least 1498 [78]).

¹⁵⁴ Baker, *Act at Oxford* (1704), 49–50 (listing “Law-Oratory” as only one form of satire). Baker’s Act directs much of its satire at an Oxford Doctor of Civil Law (41).

violations, drunkenness, and other infractions.¹⁵⁵ A Cambridge decree of 1628 suggests that university magistrates and laws were a common *tripose* target: “prevaricators, triposes, and other disputants should [h]ereafter abstain from mimic salutations and gesticulations, ridiculous jokes and scurrilous jeers, at the laws, statutes or ordinances of the University, or the magistrates” (including, presumably, this very ordinance).¹⁵⁶ Hogarth’s frontispiece to Nicholas Amhurst’s *Terrae-Filius* (1726) shows what appears to be an ecclesiastical court in an Oxford disputation hall punishing Amhurst for having gone too far as *terrae filius* in his “scurrilous jeers, at the laws” (fig. 6.2): those Amhurst has slandered rip off his wig, while a member of the court tears his book in two.¹⁵⁷

Terrae filius or *tripose* satire in fact often went too far: the universities regularly expelled—and even occasionally imprisoned—the offenders (including Amhurst himself).¹⁵⁸ In fact, revels in both the universities and the Inns often got out of hand. In 1519, the Lincoln’s Inn governors “ffrom hensforth uttrely banyshed” “Jack Strawe & all his adherentes” as too incendiary. Several years later, the Lord of Misrule accidentally killed someone.¹⁵⁹ In the Cambridge colleges, students sometimes punished those who refused to participate in the revels by “stanging” them: tying them to a pole and carrying them through the courts of the college.¹⁶⁰ In 1628, the selection of a Lord of Misrule at Pembroke College in Cambridge ended in a drunken riot.¹⁶¹ One might think that such riotous behavior would lead these institutions to ban revels and the figures who stood for misrule. But in fact, university statutes *mandated* the appearance of the *terrae filius* and *tripose*. And the Inns not only tolerated the revels but penalized those who refused to participate. Any member appointed to the grand Christmas “Parliament” who failed to serve was to be fined, “at the discretion of the Bench,” as well as everyone who failed to attend “the solemn Revells.”¹⁶² Dugdale outlines early regulations mandating the revels and the “Exercises of Dancing” during the Christmas season: on one occasion, every tenth barrister was “put out of Commons, for examples sake, because the whole Bar offended by not Dancing on *Candlemass* day preceding, according to the *antient Order* of this Society”; if they ignored this rule again, they were told, “they should be fined or disbarred.”¹⁶³ Why?

¹⁵⁵ Henderson, “Erudite Satire,” 164.

¹⁵⁶ Quoted in Costello, *Scholastic Curriculum*, 27.

¹⁵⁷ For the view that the image represents an ecclesiastical court, see Paulson, *Hogarth’s Harlot*, 370, note 114, noting also that the location is probably the Sheldonian Theatre in Oxford.

¹⁵⁸ See Haugen, “Imagined Universities,” 318, 335; Henderson, “Erudite Satire,” 144, 148, 161; Feingold, “Humanities” (*History of the University of Oxford*, Vol. 4), 304.

¹⁵⁹ The Lincoln’s Inn banishment of Jack Straw is quoted in Nelson and Elliott, Jr., ed., *Inns of Court*: 1:xix; and for this incident and the 1524 Lord of Misrule accident, see Baker, *Oxford History of the Laws of England*, Vol. 6, 462. For several more examples of riotous behavior in the Inns, see Butler, “Legal Masque,” 181, 184–5.

¹⁶⁰ Morgan and Brooke, *History of the University of Cambridge*, 144.

¹⁶¹ Morgan and Brooke, *History of the University of Cambridge*, 142–3.

¹⁶² Dugdale, *Origines Juridicales*, 153, 213.

¹⁶³ Dugdale, *Origines Juridicales*, 246.

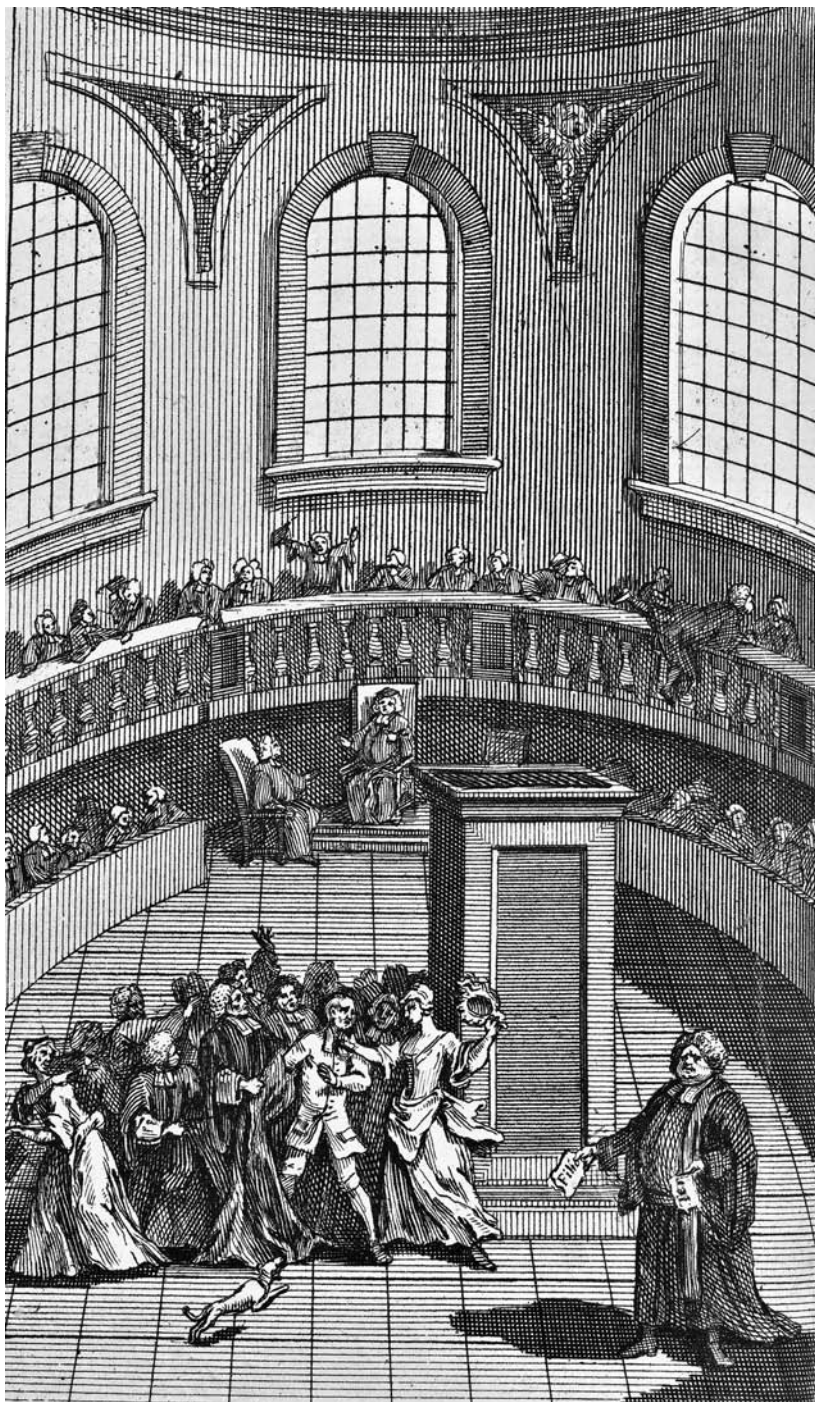


Fig. 6.2 An ecclesiastical court in an Oxford disputation hall punishes a *terrae filius* for scurrilous jeers at the laws in Hogarth's frontispiece to Nicholas Amhurst's *Terrae-Filius* (1726).

Amhurst, *Terrae-Filius*. The Bodleian Libraries, University of Oxford, Douce A 466.

Contemporaries offered several explanations, and scholars have elaborated on these. First, recreation was necessary “after serious Affairs,” serving “as Sauces for Meats of better Nourishment” (explains one of the Prince’s Councilors in the *Gesta Grayorum*).¹⁶⁴ At the same time, the revels were “serious Affairs,” communicating politics and raising important legal issues in the guise of entertainment—a view that many scholars have pursued through serious analysis not only of tragedy in the Inns but of such apparently frivolous entertainments as the 1594 Gray’s Inn law-sports.¹⁶⁵ The revels also provided behavioral and professional training: they taught students “how to use themselves” (as the Bacon report put it) both in the courtroom and when fraternizing with nobility.¹⁶⁶ Like the moots, the revels were “Performance . . . Exercises,” serving as an extension of both rhetorical training and the professional performance training I have been exploring throughout this chapter: one observer particularly notes the “good utterance” of a performer in the Gray’s Inn *Masque of Mountebanks* in 1617–18.¹⁶⁷ Hinting at the relationship between these two kinds of “Performance . . . Exercises,” the Prince burlesques the instructions one could find in the manuals (sounding decidedly like Fulbecke or Phillips): gentlemen must not “faint or fail in Courage, or Countenance, Semblance, Gesture, Voice, Speech,” but must instead represent “the Profession, Practice and Perfection of a compleat and consummate Gentleman” (implicitly, a “Gentleman of Gray’s Inn,” one studying for the profession and practice of law).¹⁶⁸ Presumably, the revels taught one not only how to perform that “Profession” (by offering performance practice) but also how *not* to perform it (how not to behave like a Lord of Misrule).

However, I would like to suggest that the “law-sports”—in their similarity to the moots—taught something else as well. We can see the constant interchange between law-sports and moots in Bulstrode Whitelocke’s description of the concurrent rehearsals for the revels and “putting of cases” in St. Dunstan’s Tavern (with which I began). Revels ceremonial closely paralleled mooting

¹⁶⁴ *Gesta Grayorum* (1688 ed.), 41. (It is, of course, a law student representing the Councilor who makes this point.)

¹⁶⁵ See e.g. Raffield, “Elizabethan Rhetoric of Signs” (“the masques . . . presented resonant images of the ideal polis: a Utopian vision of the English state, in the governance of which common lawyers would play a crucial role” [246]); Winston, *Lawyers at Play* (examining the politics of numerous plays performed in the Inns); Cunningham, “‘So Many Books, So Many Rolls of Ancient Time’” (on *Gorboduc*); Butler, “Legal Masque of Humanity” (on *The Triumph of Peace*); and for studies of the legal significance of *Comedy of Errors*, see note 146, above; Zurcher, “Consideration, Contract, and the End of the *Comedy of Errors*” (on language of *assumpsit* and ideas about the changing law of contract); and Dente, “Renaissance Actors and Lawyers” (on the play’s representation of contracts). But see Elton, *Shakespeare’s Troilus and Cressida*, for a reading of the play as festive revelry.

¹⁶⁶ Waterhouse, *Fortescutus*, 546.

¹⁶⁷ For the revels as “Performance . . . Exercises,” see *Gesta Grayorum*, 20. On the revels as rhetorical training, see e.g. Bland, “Rhetoric and the Law Student”; and Perry, “Legal Rhetoric Books in England,” 7. For “good utterance,” see Nelson and Elliott, Jr., ed., *Inns of Court*: 1:xxvi and 2:697, quoting Gerard Herbert.

¹⁶⁸ *Gesta Grayorum*, 16. The Prince has granted a pardon with some exceptions, including for those who fail in performance (with sexual connotations).

ceremonial (and vice versa). According to Sir John Spelman, when the Christmas Prince or “king” was chosen in Gray’s Inn c.1500, he was to replicate parts of the mooting ritual. He must

sit in the middle of the high bench [and] choose the officers, who were previously ordained by the fellowship at the Cupboard. And then the wardens of the wax shall take the torches, and the cupbearer and the carver shall give bread and ale to the king.¹⁶⁹

Participants performed both moots and revels in the Inns’ grand halls. There, mock trials like the trial of the Sorcerer mimicked the arrangements of the moots, using the benchers’ raised dais for the Prince and his councilors, and creating a bar out of the “forms” (whatever adjustments burlesque elements may have required).¹⁷⁰ One wonders whether students sometimes experienced a bit of recursive dysphoria when they went to the courts in the morning, performed in a moot in the afternoon in a space set up like the Court of Common Pleas, and performed in a mock trial like that at Gray’s Inn not long after, in a space set up like a moot. Just as the moots echoed real trials, mock trials in the revels echoed the moots, both in some ways parodying their parent forms. Even revels that did not involve mock trials were similar to the moots in certain respects. Like these, they were “Performance . . . Exercises” that revolved around narratives of imaginary worlds, combining fairy tale with farce, mixing knights, mighty princes, and “nuns” (of various sorts) with prosaic modern characters (often, students rendered as fictional representations of themselves).

¹⁶⁹ Translated in Nelson and Elliott, Jr., ed., *Inns of Court*, 1:xix. For further examples of revels ceremonial that closely paralleled that of moots, see e.g. Dugdale, *Origines Juridiciales*, 161, 198, 204–5, describing (for instance) the following choreography for offering wafers and Ipocras (sweet wine) to the Judges during the “solemn Revells”: “When the last measure is dancing, the *Reader* at the Cupboard, calls to one of the Gentlemen of the Bar, as he is walking or dancing with the rest, to give the Judges a Song, . . . after which, all the rest of the Company follow, and . . . [w]hilst they are thus walking and singing, the *Reader* with the white Rod, departs from the Cupboard, and makes his choice of a competent number of Utter-Baristers, and as many under the Bar, whom he takes into the Buttry; where, there is delivered unto every Barister, a Towell, with Wafers in it; and unto every Gentleman under the Bar, a wooden Bowl, filled with Ipocras, with which they march in order into the Hall, the *Reader* with his white Rod, going foremost. And when they come . . . opposite to the Judges, the Company divide themselves, one half (aswell Baristers, as those under the Bar) standing on the one side of the *Reader*; the other on the other side,” at which all serve the judges and make “solemn Congee[s]” (deep bows). *Origines Juridiciales*, 205.

¹⁷⁰ The Prince, acting as judge, “ascended his Throne at the high End of the Hall” (25), on the dais where the benchers sat (usually acting as judges); “His Counsellors and great Lords were placed about him, and before him; below the Half-pace, at a Table” (where moot-men would normally sit below benchers) “sate his learned Council and Lawyers” (9). The prisoner was “arraigned at the Bar” (23). Gray’s Inn paid a carpenter in 1571–72 “for mendynge formes and tables in the hall after the great Showe” (quoted in Nelson and Elliott, Jr., ed., *Inns of Court*, 1:xxxviii). For further details on the arrangement of the hall, see Girouard, “Halls of the Elizabethan and Early Stuart Inns of Court.” And see Goodrich, *Law in the Courts of Love*, 79–80, on the “commons” where both exercises and revels were held (simultaneously regulated and festive).

These similarities might warrant using moots to shed light on revels, illuminating the revels' fundamental seriousness, as so many scholars have done. But they might also warrant using revels to shed light on moots, illuminating the moots' fundamental revelry. So, for instance, while *Comedy of Errors* may be a play that explores jurisdiction, *assumpsit*, contract, citizenship and exile, it may at the same time capture the revelry of the moots, with their fast-paced repartee, twinning, multiple identities, and screwball misrecognitions. Contemporaries describe the moots as "solemn." But they also describe the revels as "solemn": the Inns "keep a solemn *Christmas*," notes the Bacon report; there are "solemn Revells" during the Christmas season.¹⁷¹ The revels did have a certain ritual solemnity, but that solemnity could quickly slide into mock solemnity. The revels are "solemn foolerie," writes John Evelyn.¹⁷² Surely the "solemn foolerie" of the revels sometimes served to reveal the foolish solemnity of the moots.

Satiric culture traveled between the Inns and universities: when Oxford expelled John Hoskyns for his *terrae filius* speech in 1592, he promptly entered the Middle Temple, where he performed the speech again at the Middle Temple revels.¹⁷³ Many of those who performed the moots had first spent several years in the university performing in (and watching) university disputations, effectively learning how to use serious oral arguments to entertain a crowd. Certainly, in university disputations, the boundary between the solemn exercises and their satiric double (the *terrae filius* and *tripose* speeches) was highly porous. Gassendi tells us that the entertaining taunts in serious disputations regularly had the audience in stitches ("[w]ho could restrain his laughter[?]"). The 1628 Cambridge decree orders not just *triposes* but "other disputants" to immediately stop engaging in "mimic salutations and gesticulations, ridiculous jokes and scurrilous jeers": the regular disputant, it seems, was often hard to distinguish from the *tripose*.

In both the Inns and the universities, while students trained themselves for serious argument, they also trained themselves to perform an officially sanctioned sendup of the law, learning legal burlesque not only conceptually, but with their voices, bodies, facial muscles. Those returning to serious "Law-stuff" after the Christmas season and performing at the very same faux "bar" where they had represented farcical lawyers during the revels might have found it hard to moot

¹⁷¹ At these, an utter-barrister "sing[s] a Song to the Judges, Serjeants, or Masters of the Bench," and then the inner- and utter-barristers "perform a second solemn Revell before them" (Dugdale, *Origines Juridicales*, 161).

¹⁷² Evelyn, *Diary*, 3:307 (referring to the 1662 revels involving the "Prince de la Grange" at Lincoln's Inn). On the revels as a "subgenre of *serio ludere*" ("rites of violence," incorporating "satire and burlesque"), see O'Callaghan, "Jests, stolne from the Temples Revels."

¹⁷³ Hoskyns rewrote the speech substantially for performance in the Inns. He performed it at the 1597–98 Christmas revels (and possibly earlier as well). See Osborn, *Life and Letters of John Hoskyns*, 10–11, 98–102 (reproducing the speech 100–2), and 222–3, 258. And see *Le Prince d'Amour* (1660 ed.), 37–40 (Hoskyns' role is "Clerk of the Council" and the speech is supposedly "*ex tempore*").

with a straight face. Having to argue for one's rightful tenancy "by my rod," or plead the case of "Thomas Massingberd" whose very livelihood depended on the secret love child of "John Cat ith' Panne," would not have helped. Especially if one *was* Thomas Massingberd. While the revels burlesqued the moots, the moots (drawn irresistibly into imitation of their festive double) could surely sometimes burlesque themselves. Here, there was an implicit logic of resemblance: if moots were like real courtrooms, and revels were like moots, revels were like real courtrooms; thus, conversely, real courtrooms were like revels.¹⁷⁴

In a sense, the verdict in the trial of the Sorcerer captures this logic of resemblance among learning exercises, revels, and real trials. In condemning not theatre but "the Knavery and Juggling" of the lawyers as the real sorcery or illusionism, the verdict evokes the historical association of legal rhetoric with theatrical tricks and impostures.¹⁷⁵ It echoes classic lawyer satire: lawyers bend your mind; they make you doubt what you saw. But the verdict in fact offers an even more searing critique of law than classic lawyer satire. For the "Juggling . . . Law-stuff" that the verdict describes actually works not precisely like theatre but like a mirror image of theatre. Theatre makes you think that "Illusions, Fancies, Dreams and Enchantments" are being "actually performed" before your eyes. Law as performed in the revels, on the other hand, "blind[s] the Eyes" of all present by "mak[ing] them think, that those things which they all saw . . . *actually performed*, were nothing else but vain Illusions, Fancies, Dreams and Enchantments" (emphasis added). That is, when you watch these law-sports you may think you are seeing only theatre. But the revels—with all their theatrics, illusionism, and cruel jokes—show law as it really is. This is how law is "actually performed." This is as real as law gets.

Conclusion

At least some of those who partook of revels in the Inns or universities seem to have imbibed the view that law, cruel and tragic as it might sometimes be, was also

¹⁷⁴ One might draw a parallel here not only with the European tradition of satiric disputation but with the tradition more specifically of burlesque trials that were at once learning exercises, forms of revelry, and very like real trials. The clerks of the Basoche in Paris were given *causes grasses* to perform during Mardi Gras in the fifteenth and sixteenth centuries ("fat cases" for Fat Tuesday), possibly arguing them in the Grand Chambre of the Parlement itself where real cases were heard. (See Bouhâik-Gironès, *Clercs de la Basoche*, 161–8, noting that several of the *causes grasses* found in the registers of the Paris Parlement use real lawyers' names, and arguing that they were probably performed there.) In Bernard de la Roche-Flavin's description, the proctors would choose a case and give it to the "young lawyers, who would plead it, to incite and move the audience to laughter." "Bien est vray qu'es Audiances, qu'on appelloit grasses le temps passé, . . . qui estoit choisie, ou reservée par les Procureurs, pour la faire plaider à un des jeunes Advocats." In these, "il n'estoit pas seulement loisible de rire, mais permis aux Advocats qui la plaidoyent, d'inciter, & esmouvoir l'Auditoire à rire." La Roche-Flavin, *Treze livres des parlemens de France* (1617 ed.), 310 [Bk 4, Ch 115–16].

¹⁷⁵ See e.g. Pico's letter (note 119 above, and Chapter 5, 217–18).

a practice of “solemn foolerie”: that those who trained in it either came to see the foolishness in its solemnities or were solemn fools. The lawyer-playwright Richard Brathwait—who studied law at both Cambridge and Gray’s Inn—found himself unable to practice law with any seriousness:

*I went to John a Styles, and John an Okes,
And many other Law-baptized folkes,
Whereby I set the practise of the Law
At as light count as turning of a straw.*¹⁷⁶

However “baptized” in the schools of law, he felt his calling was not law but poetry (and, in particular, satire), in part due to a formative event at Oxford: his performance as *terrae filius* c.1607–8. It was the “performance of [that] exercise,” he writes, that led him to put himself “forward [generally] in Publique Exercises”: disputations both in the university and in Gray’s Inn. But that performance also gave him an identity (as he wrote) “whose *Style* I have, and shall ever retaine, the *Sonne of Earth; Terrae Filius*.”¹⁷⁷ In such legal burlesques as *A Solemn Jovial Disputation [on] the Law of Drinking* (1617)—precisely the kind of “solemn foolerie” the revels taught—one can see Brathwait still performing the *terrae filius* a decade or so later.¹⁷⁸ Once a *terrae filius*, always a *terrae filius*. Once a Lord of Misrule, always a Lord of Misrule. Performing in revels changed who you were.

So did disputations. A character named “Irony” in a 1678 school entertainment argues that performing “*Disputations in Schools*” trained students in “*Ironical dissimulation*.”¹⁷⁹ The “counterfeiting [of] *Voice* [and] *Gesture*” in such disputations, explains Irony, demands the presence of Irony himself, for “[i]f I did not spirit them, *Voice* would be a pittiful *Babble* and *Gesture* a miserable *Gesticulation*” (116–17). But one should not fear “*Ironical dissimulation*”: it is “useful and laudable,” as “necessary to the practice of *Vertue* as to the propagation of *Vice*” (118). Performing in the revels, of course, required “*Ironical dissimulation*” writ large. But so did disputations and moots generally. If, as Baker writes, lawyers “created themselves, by performing the exercise[s],” that self-creation involved not merely skills training or a change in status. Pretending to be a lawyer

¹⁷⁶ Brathwait, *Shepherds Tales*, 13. For Brathwait’s biography, see Bowes, *Richard Brathwait*.

¹⁷⁷ Brathwait, *Spiritual Spicerie*, 424, 426 (a spiritual autobiography and devotional text distinctly satiric in tone). There seems to be no authoritative record of his performance as *terrae filius*, but he was at Oxford 1605 to c.1608, and was likely to have performed in the latter end of this period.

¹⁷⁸ *A Solemn Jovial Disputation* is in fact Brathwait’s translation of *Disputatio inauguralis theoretico-practica jus potandi* (1616) by “Blasius Multibibus” (a pseudonym formerly identified as Brathwait’s).

¹⁷⁹ Shaw, *Words Made Visible*, 118, 116 (hereafter cited in the text). I have taken the passage somewhat out of context, for Irony in fact claims a much wider dominion (in a defense of Machiavellian dissimulation and a rhetorical cynicism characteristic of the Restoration): “[t]he whole World would be a rude lump if I did not form it. . . . All that write not as they speak, all that speak not as they think, all that think not according to truth, all that intend not as they pretend, all that practise not as they profess, all that look one way and row another, are my Subjects” (117).

on a daily basis by practicing “*Ironical* dissimulation” offered professional formation of a far more thoroughgoing kind. In daily moots and disputations, students took on roles “whose *Style*” they were “ever [to] retaine.” Nearly every day, they “created themselves, by performing . . . exercise[s]” in “*Ironical* dissimulation.” Nearly every day, they counterfeited not only their clients but themselves, in performances in which their own names became the names of characters they impersonated. Nearly every day, they dramatized the legal profession through “Performance . . . Exercises” that were halfway between solemn rehearsal and farce, and yet very like the real thing.